STATE OF MICHIGAN
GRETCHEN WHITMER
GOVERNOR
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING
ROBERT GORDON
DIRECTOR

Emergency Order Under MCL 333.2253 –Requirements for residential care facilities

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine for this disease. On March 10, 2020, the Michigan Department of Health and Human Services ("MDHHS") identified the first two presumptive-positive cases of COVID-19 in Michigan. Throughout the pandemic, Michigan has used a range of public health tools and guidance to contain the spread of COVID-19 and protect the public health, including via the Governor's authority under the Emergency Management Act and the Emergency Powers of Governor Act. On Friday, October 2, 2020, the Michigan Supreme Court concluded that the Governor was not authorized by law to issue executive orders addressing COVID-19 after April 30, 2020, invalidating the executive orders on that topic.

Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases peaking at nearly 2,000 per day in late March. Strict preventative measures and the cooperation of Michiganders drove those numbers down dramatically, greatly reducing the loss of life. Although fewer than 100 new cases per day were reported in mid-June, cases have increased since that time, and recently nearly 1,000 new cases have been reported per day. To protect vulnerable individuals, ensure the health care system can provide care for all health issues, and keep schools open as we head into the influenza season, we must not permit the spread of COVID-19 to increase. This necessitates continued use of mitigation techniques to restrict gatherings and require procedures in order to reduce the spread of the virus. In the absence of the Governor's emergency orders, it is necessary to issue orders under the Public Health Code addressing these topics.

Michigan law imposes on MDHHS a duty to continually and diligently endeavor to "prevent disease, prolong life, and promote public health," and gives the Department "general supervision of the interests of health and life of people of this state." MCL 333.2221. In recognition of the severe, widespread harm caused by epidemics, MDHHS has special powers, dating back a century, to address threats to the public health like that posed by COVID-19. MCL 333.2253 ("If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code."). See also *In re Certified Questions* (opinion of Viviano, J., concurring, at 20) ("the 1919 law passed in the wake of the influenza epidemic and Governor Sleeper's actions is still the law, albeit in slightly modified form"); see also McCormack, C.J., dissenting, at 12.

Considering the above, and upon the advice of scientific and medical experts employed by MDHHS, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws. As provided in MCL 333.2253, these emergency procedures are not limited to the Public Health Code.

This order, issued pursuant to MCL 333.2253, establishes requirements for residential care facilities and consolidates all previously issued orders establishing exceptions to these restrictions.

I therefore order that:

1. Residential care facilities (hereafter referred to as "facilities" in this order) shall:

   (a) Limit communal dining and internal and external group activities consistent with Center for Medicare and Medicaid Services guidance and MDHHS guidance;

   (b) As soon as reasonably possible, but no later than 12 hours after identification, inform employees and residents of the presence of a confirmed COVID-19 positive employee or resident;

   (c) As soon as reasonably possible, but no later than 24 hours after identification of a confirmed COVID-19 positive employee or resident:

      (1) Inform legal guardians or health proxies for all residents within the facility of the presence of a confirmed COVID-19 positive employee or resident;

      (2) Post a notice in a conspicuous place near the main entrance of the care facility indicating the presence of a confirmed COVID-19 positive employee or resident. The notice must continue to be displayed until 14 days after the last positive COVID-19 test result for an employee or resident in the facility;

      (3) Adopt a protocol to inform prospective residents and staff of the presence of a confirmed COVID-19 positive employee or resident. The protocol must remain in place until 14 days after the last positive COVID-19 test result for an employee or resident in the facility;

      (4) Contact the local health department in the facility's jurisdiction to report the presence of a confirmed COVID-19 positive employee or resident;

      (5) Support and comply with contact tracing efforts as requested.

   (d) Timely notify employees of any changes in CDC recommendations related to COVID-19;

   (e) Keep accurate and current data regarding the quantity of each type of appropriate PPE available onsite, and report such data to EMResource upon MDHHS's request or in a manner consistent with MDHHS guidance; and

   (f) Report to this Department all presumed positive COVID-19 cases in the facility together with any additional data when required under MDHHS guidance.

2. Except as otherwise provided in this or any subsequent orders, facilities must prohibit from entering their facilities any visitors that: are not necessary for the provision of medical care, the support of activities of daily living, or the exercise of power of attorney or court-appointed guardianship for an individual under the facility's care; are not a parent, foster parent, or guardian of an individual who is 21 years of age or under and who is under the facility's care; are not visiting an individual under the facility's care that is in serious or critical condition or in hospice care; and are not visiting under exigent circumstances or for the purpose of performing official governmental functions.

3. Facilities may permit outdoor visitation when the facility meets all of the following criteria:

(a) The facility has had no new COVID cases originate in the facility, including those involving residents or staff ("facility-onset cases"), within the prior 14 days. Admission of a resident who is known to be COVID-19-positive at the time of admission does not constitute a facility-onset case;

(b) The Local Health Department has not made a determination that the facility is unsafe for visitation based upon local epidemiological conditions;

(c) The facility is able to meet all additional requirements identified in Section 4 of this order.

4. Prior to offering outdoor visitation, the facility must assure all of the following:

(a) The outdoor visitation area allows for at least six feet between all persons. Tables are recommended as a barrier to ensure proper distancing. Marking the area and signage may be necessary to inform visitors of expectations. Tables and chairs must be disinfected after each use;

(b) The outdoor visitation area provides adequate protection from weather elements (e.g., shaded from the sun);

(c) An employee or volunteer trained in infection control measures has sufficient proximity to observe and assure compliance with the patient protections in Section 4.

5. Facilities may permit indoor visitation only in the following circumstances:

(a) The visit supports activities of daily living ("ADLs") or are necessary to ensure effective communication with individuals with hearing, vision or speech impairments and are limited to arrangements that:

(1) Existed prior to March 14, 2020, or become necessary in light of a change in the resident's condition, such as refusing to eat, that could be improved with assistance from a resident support person; and

(2) Involve a family member or friend assisting a resident with activities of daily living, such as feeding the resident to encourage and ensure adequate nutrition; and

(3) Require the visitor to wear a mask at all times and use appropriate procedures for the assigned ADL tasks, with the facility ensuring compliance through training or observation; and

(4) Are scheduled in advance for specific and individualized ADL tasks; and

(5) Occur in the resident's room, if private, or in a room designated by the facility; or

(b) When a resident is in "serious or critical condition or in hospice care".

6. Facilities with residents that had ADL arrangements prior to March 14, 2020, or residents that have had a change of condition that could be improved with ADL arrangements, must attempt to contact the resident's next of kin to establish arrangements.

7. Facilities allowing visitation consistent with this order shall:

(a) Permit visits by appointment only. Facilities may impose reasonable time limits on visits and must require that visitors log arrival and departure times, provide their contact information, and attest, in writing, that they will notify the facility if they develop symptoms consistent with COVID-19 within 14 days after visiting;

(b) Limit the number of visitors per scheduled visit to two persons or fewer;

(c) Exclude visitors who are unwilling or unable to wear a face covering for the duration of their visit, and persons unable to follow hand hygiene requirements, and instead encourage those persons to use video or other forms of remote visitation;

(d) Limit visitor entry to designated entrances that allow proper COVID-19 screening;

(e) Perform a health evaluation of all visitors each time the visitor seeks to enter the facility, and deny entry to visitors who do not meet the evaluation criteria. Screenings must include tests for fever (≥100.0°F), other symptoms consistent with COVID-19, and known exposure to someone with COVID-19. Facilities must restrict anyone with fever, symptoms, or known exposure from entering the facility;

(f) Post signage at all visitor entrances instructing that visitors must be assessed for symptoms of COVID-19 before entry, and instruct persons who have symptoms of a respiratory infection (including but not limited to, fever, cough, or shortness of breath) to not enter the facility;

(g) Make hand sanitizer and/or hand washing facilities safely available to visitors, and post educational materials on proper hand washing and sanitization;

(h) Ensure availability of adequate staff to assist with the transition of residents, monitoring of visitation, and for cleaning to appropriately disinfect surfaces in the visitation areas after each visit;

(i) Educate visitors on additional personal protective equipment (PPE) use requirements for visitors beyond a face covering, if any. The facility must supply the visitor with the additional PPE. Entry may not be denied based on a visitor not having the additional PPE required by the facility;

(j) Disallow visitation during aerosol-generating procedures or during collection of respiratory specimens unless deemed necessary by staff for the care and well-being of the resident;

(k) Appropriately restrict visitor movement within the facility to reduce the risk of infection;

(l) Require that visitors follow social distancing requirements and refrain from any physical contact with residents and employees. Visitors who are providing support for ADLs are not expected to abide by social distance requirements between the visitor and the resident;

(m) Make available an employee or volunteer trained in infection control measures at all times during the visit;

(n) Limit the number of overall visitors at the facility in any given time based upon limited space, infection control capacity, and other appropriate factors to reduce the risk of transmission;

(o) Advise residents and visitors to not share food;

(p) Communicate with residents and their families to inform them of updated visitation protocols;

(q) Prohibit visits to residents who are in isolation or are otherwise under for observation for symptoms of COVID-19.

8. Subject to section 7 of this order, visitation restrictions do not apply to:

(a) Medical service providers such as hospice, podiatry, dental, durable medical equipment, mental health, speech pathology, occupational therapy, physical therapy, and other specialists in the definition of essential workers. These services must be provided outdoors or in a well-ventilated area whenever possible. If services must be provided indoors, the facility must restrict movement within the facility to the greatest extent possible to reduce the risk of infection. Medical service providers must be subject to the same PPE and testing requirements as other staff working in the facility;

(b) Non-medical service providers such as hairdressers when it is determined that there will be an actual or potential negative impact on the resident when the service is not provided, and the resident will not benefit from remote service delivery. These services may be provided to residents who have never been diagnosed with COVID-19, or who are no longer in the infectious period for COVID-19 per CDC guidance. These services must be provided outdoors or in a well-ventilated area whenever possible. If services must be provided indoors, the facility must restrict movement within the facility to the greatest extent possible to reduce the risk of infection. Non-medical service providers must be subject to the same PPE requirements as other staff working in the facility. Non-medical service providers who are routinely in the building for more than 8 hours per week and have direct resident contact during this time must be subject to the same testing requirements as other staff working in the facility;

(c) Resident physicians or other clinical students. Resident physicians and other clinical students must be subject to the same PPE and testing requirements as other staff working in the facility;

(d) Volunteers who have been trained in infection control measures and are serving as facilitators of outdoor visits.

(e) Window visits when a barrier is maintained between the resident and visitor. Accommodations shall be made for residents without access to ground floor window or window that does not open to an area accessible to the visitor. Accommodations may include utilizing a visitation room or space with a window or door access to visitor.

9. For purposes of this Order, terms are defined as follows:

(a) "Adult foster care facility" has the same meaning as provided by section 3(4) of the Adult Foster Care Facility Licensing Act, 1979 PA 218, as amended, MCL 400.703(4).

(b) "Appropriate PPE" means the PPE that MDHHS recommends in relevant guidance.

(c) "Assisted living facility" means an unlicensed establishment that offers community-based residential care for at least three unrelated adults who are either over the age of 65 or need assistance with activities of daily living (ADLs), including personal, supportive, and intermittent health-related services available 24-hours a day.

(d) "COVID-19-affected resident" means a resident of a residential care facility who is COVID-19 positive, who is a person under investigation, or who displays one or more of the principal symptoms of COVID-19.

(e) “Home for the aged” has the same meaning as provided by section 20106(3) of the Public Health Code, MCL 333.20106(3).

(f) “Nursing home” has the same meaning as provided by section 20109(1) of the Public Health Code, MCL 333.20109(1).

(g) “Person under investigation” means a person who is currently under investigation for having the virus that causes COVID-19.

(h) “Principal symptoms of COVID-19” are fever, atypical cough, or atypical shortness of breath.

(i) “Residential care facilities” means a nursing home, home for the aged, adult foster care facility, hospice facility, substance use disorder residential facility, independent living facility, or assisted living facility.

10. If any provision of this order is found invalid by a court of competent jurisdiction, whether in whole or in part, such decision will not affect the validity of the remaining part of this order.

11. Consistent with MCL 333.2261, violation of this order is a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than $200.00, or both.

This order is effective immediately, and remains in effect through October 30, 2020. Persons with suggestions and concerns are invited to submit their comments via email to COVID19@michigan.gov.

Date: October 6, 2020

Robert Gordon

Robert Gordon, Director

Michigan Department of Health and Human Services