STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

GRETCHEN WHITMER
GOVERNOR

ROBERT GORDON
DIRECTOR

Emergency Order Under MCL 333.2253
Mandatory Testing, Preventative Measures, and Safe Housing for Agricultural Workers

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. On that same day, Governor Gretchen Whitmer issued Executive Order 2020-4 declaring a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33. More recently, on July 14, 2020, the Governor issued Executive Order 2020-151, again finding that the COVID-19 pandemic continues to constitute a disaster and emergency under the Emergency Powers of the Governor Act, and to the extent permissible, under the Emergency Management Act of 1976.

COVID-19 can spread quickly in crowded settings, especially congregate living settings and indoor settings without social distancing. Throughout the pandemic, substantial outbreaks have occurred in migrant housing camps and food and beverage manufacturing or processing facilities, to tragic effect. These outbreaks not only create severe risks for workers but also create a significant risk of COVID-19 spread among the broader community and may create risks for the food supply chain as well. Recognizing these considerations, Governor Whitmer issued Executive Order 2020-137 to require that owners and operators of migrant housing camps take preventative measures to decrease spread of COVID-19 among workers. Governor Whitmer also issued Executive Order 2020-145, which requires preventative measures at meat and poultry processing plants to mitigate COVID-19 spread.

Additional response measures, including identification and isolation of persons affected by COVID-19 residing in migrant housing camps or working in high-risk agricultural settings, are essential to control the pandemic. It is imperative that workers in these settings have access to regular COVID-19 testing and that suspected and confirmed cases are reported quickly to state and local public health officials. The timely reporting of this information enables MDHHS and local health departments to take appropriate public health action to ameliorate the effect of an outbreak; help facilities with procuring PPE or other necessary hygiene supplies; and take any other necessary action to prevent the spread of the virus and to protect the health and safety of workers.

In light of the above and pursuant to section 2253 of the Public Health Code, I have concluded 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.

I therefore order that:

1. The procedures and restrictions outlined in EO 2020-137 and EO 2020-145 are necessary to control the epidemic and protect the public health. They are hereby incorporated into this order and remain in place until this Emergency Order is lifted. Any violation of EO 2020-137 or EO 2020-145 constitutes a violation of this order.

2. All references to "COVID-19 testing" or "testing" in this order refer to diagnostic tests that seek to identify viral RNA, have received Emergency Use Authorization from the Food and Drug Administration, and are completed by a laboratory of moderate or high complexity under the Clinical Laboratory Improvement Amendments ("CLIA"). "Testing" does not include tests that seek to identify antibodies to COVID-19 rather than viral RNA, including serology, antibody, or blood tests.

3. Employers and housing providers in certain agricultural settings, as defined below, must provide diagnostic testing for COVID-19 to workers or residents and adopt infection prevention measures as follows:

    a. All owners and operators of migrant housing camps licensed by the Michigan Department of Agriculture and Rural Development (MDARD) under Part 124 of the Public Health Code (hereafter "housing operators") must:

        i. Provide testing for any resident with symptoms or suspected exposure to COVID-19;

        ii. Provide testing for all newly arriving residents within 48 hours after arrival, unless the resident has already been tested in the 72 hours before arrival;

        iii. To the greatest extent possible, house newly arriving residents in a separate living unit from current residents for 14 days after arrival;

        iv. If housing in a separate living unit cannot be accomplished, require that newly arriving residents wear a cloth face covering at all times during the first 14 days after arrival, including in dwelling units and after work hours, except when eating, drinking, or performing personal hygiene activities or if the resident cannot medically tolerate a face covering;

        v. Provide a second test to newly arriving residents 10 – 14 days after arrival;

        vi. Conduct temperature checks of residents at least once per day;

        vii. Provide testing for any resident registering a fever of 100.4 degrees Fahrenheit or higher.

    b. All agricultural employers, as defined below, with over 20 workers on site at a time (not including the employer's family members) must:

        i. Provide testing for any worker with symptoms or suspected exposure to COVID-19, and

        ii. Provide testing for all new workers prior to beginning in-person work.

        iii. For the purposes of this order, "agricultural employer" (hereafter "employer") includes:

1. All employers of migrant agriculture workers who do not live on site, including H-2A workers;

2. All employers of seasonal agriculture workers who do not live on site;

3. All owners and operators of meat, poultry, and egg processing plants;

4. All owners and operators of greenhouses.

c. All employers and housing operators in sections 3(a) and 3(b) must also complete one-time baseline testing of all current workers or residents.

d. All employers and housing operators in sections 3(a) and 3(b) must implement these testing requirements as soon as practicable and no later than by August 24, 2020.

e. Housing operators and employers may agree by mutual consent for an employer or housing operator to enforce some or all of the requirements in section 3(a)(i. – viii.), where more practicable in the environment. Such agreements must be in writing.

f. If an individual is subject to multiple testing requirements under sections 3(a) and 3(b), an employer and housing operator may utilize one test and a documented testing result to fulfill multiple testing requirements for the same period of time. Employers must take primary responsibility for testing in this instance, unless the housing operator agrees to conduct testing by mutual consent.

g. Employers and housing operators only need to provide testing to individuals ages eighteen and over. Youth under the age of eighteen are exempt from the testing requirements in this section.

h. Employers and housing operators are responsible for arranging testing for workers and residents as described in this order, including specimen collection from workers, laboratory processing of the specimens, and ensuring that results are reported to state and local public health authorities. Employers and housing operators may contract with occupational health firms, medical providers, laboratories, or other vendors to complete testing as needed. Any of the responsibilities of employers or housing operators under this order may also be completed by their designees, if they have contracted with a capable entity to provide that service. These contracts must be in writing.

i. Employers, housing operators, or medical providers conducting testing must provide information about the test and the consequence of not testing in the individual's preferred language. Consent or assent must be obtained from each individual to conduct the test. Employers or housing operators may not pressure, intimidate, or otherwise coerce individuals to decline testing.

j. Workers who decline testing may not conduct in-person work and, if living in a licensed migrant housing camp, must be housed in isolation housing consistent with social distancing and infection prevention measures. The worker must be informed of these requirements in the worker's preferred language. These measures must continue until the individual is tested and receives a documented negative result.

k. Employers and housing operators are responsible in the first instance for financial costs resulting from testing, though they or their designee may seek reimbursement from health insurance where applicable and may seek state assistance to conduct testing as described in section 3(l). Employers and housing operators may not pass costs along to

workers, including costs uncovered by health insurance, whether in the form of direct charges or indirect charges, fees, compensation changes, or other financial means.

l. Employers and housing operators facing challenges arranging testing may seek assistance to conduct testing as follows:

   i. Employers and housing operators seeking assistance may submit a request for testing assistance to MDHHS at MDHHS-Migrant-Affairs@michigan.gov, using the attached template;

   ii. MDHHS may direct requestors to testing resources available through medical providers and in the community;

   iii. MDHHS may alternatively provide direct assistance with supplies, specimen collection, and laboratory processing;

   iv. The State of Michigan will provide testing support as capacity allows. The State retains sole discretion to determine whether to fulfill requests for assistance.

m. As soon as practicable and no later than August 10, 2020, employers and housing operators must complete a plan for conducting testing consistent with this order, using the attached template. Such plans must, at a minimum, identify a schedule for actions; laboratories or hospitals with which the facilities will partner; and a procedure for addressing individuals who decline testing. Those plans must be made available to MDHHS, MDARD, or the Michigan Occupational Safety and Health Administration upon request.

n. When conducting testing, employers, housing operators, or their designees must ensure that laboratory requisition forms and any other documentation includes, at a minimum, the information below. These data elements ensure that state and local public health can appropriately follow up on any positive cases identified. Laboratories must comply with existing reporting requirements, namely reporting all tests completed, both positive and negative, to the Michigan Disease Surveillance System.

   i. Full Name

   ii. Date of Birth

   iii. Sex

   iv. Race

   v. Ethnicity

   vi. Facility/Employer Address

   vii. Patient Telephone Number

   viii. Date of Sampling Event (Specimen Collection)

   ix. Name of Specific Laboratory Test

   x. Date of Laboratory Test Completed

xi. Laboratory Test Results

xii. Laboratory Name

xiii. Laboratory License Number

xiv. Name, Address, Telephone, and Fax Number of the Ordering Clinician

o. Employers, housing operators, or their designees must report test results to the patient.

p. An employer or housing operator that requests MDHHS assistance to comply with this order by August 11, 2020, does not receive such assistance, and cannot comply for reasons beyond its control (e.g. inadequate testing supplies) may seek a determination from MDHHS that it has not violated this order. Employers or housing operators must report to MDHHS at MDHHS-Migrant-Affairs@michigan.gov within 24 hours of their known inability to comply with their testing plan. MDHHS may, in its discretion, determine that the entity cannot comply with this order for a reason beyond its control. An entity that receives such a determination from MDHHS will not be in violation of this order.

q. Employers and housing operators must maintain records of testing conducted for one year and comply with any applicable confidentiality laws. MDARD may review such records and compliance with this order during any inspection, licensing renewal, or at its discretion. MDHHS may review such records at its discretion.

4. Employers and housing operators subject to these testing requirements, as defined in section 3, must take the following steps when a worker or resident tests positive for COVID-19 or is exposed to the virus:

a. Following a positive test of a worker, employers must take all necessary precautions in accordance with relevant guidance from the Centers for Disease Control and Prevention ("CDC") to prevent transmission of the COVID-19 virus. Relevant interim guidance from CDC includes "Guidance for Manufacturing Workers and Employers (link)", "Guidance for Meat and Poultry Processing Workers and Employers (link)", "Interim Guidance for Businesses and Employers Responding to COVID-19 (link)" and "Interim Guidance for Agricultural Workers and Employers (link)". These guidance materials include information on risk assessment, prevention and risk reduction, planning, worker and employer education and training, screening and monitoring, PPE, cleaning and disinfection, and other relevant topics.

b. Employers must exclude workers with COVID-19 from work until they have met all return to work criteria established by the CDC. Employers must maintain confidentiality of an worker's test result and not identify them, as required by the Americans with Disabilities Act (ADA).

c. Employers must also exclude from work workers with known exposure to an individual with COVID-19 (i.e., close contact (within six feet) with the individual for a prolonged duration (15 minutes or over)). Employers must maintain confidentiality of an worker's test result and not identify them, as required by the Americans with Disabilities Act (ADA).

d. Employers and housing operators must make reasonable efforts to connect individuals who test positive to state and local resources available to meet their basic needs

including direct support, food, housing and personal care products, if not provided under section 5 of this order.

e. Employers must comply with all requirements of the federal Families First Coronavirus Response Act, if applicable. This Act requires that covered employers provide up to two weeks of paid sick leave for workers in isolation or quarantine due to COVID-19 infection or exposure. This Act also provides a process for employers to be reimbursed for these costs. Employers should consult federal guidance to better understand the provisions of this Act: https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave#_ftnref4.

f. Employers and housing operators must notify the local health department and the MDHHS Office of Migrant Services at MDHHS-Migrant-Affairs@michigan.gov. These notifications will allow public health departments to appropriately implement a public health response and to assist with supports for workers.

5. The state may make available options for housing suitable for isolation or quarantine for agricultural workers with COVID-19, exposure to COVID-19, or otherwise at risk of COVID-19 infection:

a. The state, or its designee, may establish safe housing locations for agricultural workers and their families, including migrant agricultural workers, workers at food manufacturing facilities, and others, affected by COVID-19 in concert with MDHHS, political subdivisions of this state, local health departments, and community service agencies.

b. Consistent with Executive Orders and guidance issued by the Governor, MDHHS, and federal partners, organizations administering these locations should develop clear communications in preferred languages and procedures for social distancing, infection control, quarantining, and isolating individuals in non-congregate settings. These settings should be individual rooms, if possible, and must include a method for separating individuals with suspected and confirmed cases of COVID-19 from those not infected so as to reduce the community spread of the disease. Families must remain together to the fullest extent possible. No individual may be separated from their family without their consent, and consent must be freely given, with no coercion, intimidation, or threat of any kind.

c. Locations established under this order must meet the basic needs of agricultural workers and their families. This includes—but is not limited to—providing food, linen services, and personal care items including toothpaste, towels, and bathing soap. Communal dining must be prohibited.

d. The state or its designee may establish administrative and procedural guidelines for locations established under this order. These guidelines may include, but are not limited to, vetting potential hosting sites, establishing criteria for entry, establishing procedures for testing for COVID-19, quarantining and isolating individuals, monitoring health and wellness, performing outreach, facilitating medical transportation, providing appropriate medical staffing, meeting safety needs, providing childcare if the location is hosting families, and ensuring that multi-lingual services or translation are available.

e. Under this order, MDHHS, county and local governments, and any other jurisdiction appropriate may contract with third parties, partner with appropriate community organizations, and accept financial and in-kind support to implement the requirements of this order, consistent with existing local, state, federal, and tribal law.

6. Definitions

    a. "Migrant agriculture worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence, including H-2A workers.

    b. "Newly arriving resident" means persons who arrive to a migrant housing camp for the first time or persons who return to the camp after an absence of over two weeks.

    c. "On site" means on the property of the agricultural employer at a particular location.

    d. "Seasonal agriculture worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence.

7. Failure to comply with this order may result in the issuance of a civil monetary penalty under the authority of MCL 333.2262.

8. MDHHS will refer any known violation of this order to MDARD, and MDARD may refer to MDHHS violations of this order. MDHHS will also report to MDARD whether a penalty pursuant to paragraph 8 was or will be assessed to the facility for noncompliance with this order. This order does not limit or hinder MDARD's authority and discretion related to its own authority to pursue additional enforcement actions as it determines appropriate.

9. Agricultural worker or authorized worker representatives (e.g., labor organizations) with concerns about occupational safety or health hazards may utilize the complaint process of the Michigan Occupational Health and Safety Administration. Complaints are accepted online at https://www.michigan.gov/leo/0,5863,7-336-78421_11407-93835--,00.html, or in emergency situations, complaints may be filed by phone at 800-866-4674.

10. Consistent with MCL 333.2263, any appeals of civil monetary citations issued under this order in accordance with the schedule of fines set forth in related emergency rules may be heard by the Michigan Office of Administrative Hearings and Rules.

11. 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.

This order is effective immediately and remains in effect until lifted.

Date: August 3, 2020

Robert Gordon

Robert Gordon, Director
Michigan Department of Health and Human Services

ATTACHMENTS

Testing Assistance Request Template
Testing Plan Template: Agricultural Employers and Migrant Housing