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. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic. 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 to issue executive orders addressing COVID-19 after April 30, 2020.

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 more than 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 prevent spread in schools 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 executive 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. MDHHS may "[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department." MCL 333.2226(d).

In recognition of the severe, widespread harm caused by epidemics, the Legislature has granted MDHHS specific authority, dating back a century, to address threats to the public health like that posed by COVID-19. MCL 333.2253(1) provides that "[i]f 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, Docket No. 161492 (Viviano, J., concurring in part and dissenting in part, at 20) ("[T]he 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 id. (McCormack, C.J., dissenting, at 12). Enforcing Michigan's health laws, including preventing disease, prolonging life, and promoting public health, requires limitations on gatherings and the establishment of procedures to control the spread of COVID-19. This includes limiting the number, location, size, and type of gatherings, and instituting mitigating measures like face coverings, to prevent ill or infected persons from infecting others.

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.

On October 6, 2020, I issued an order, pursuant to MCL 333.2253, establishing requirements for residential care facilities and consolidating all previously issued orders establishing exceptions to these restrictions. This order further expands those exceptions, permitting indoor visitation in residential care facilities under certain circumstances.

I therefore order that:

1. Resident and Employee Protections.

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

        (1) Limit communal dining and internal and external group activities consistent with the Center for Medicare and Medicaid Services guidance included in **QSO-20-39-NH** (issued on September 17, 2020);

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

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

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

(B) Post a notice in a visible and obvious place near the main entrance of the 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;

(C) Adopt a protocol to inform prospective residents and staff of the presence of a confirmed COVID-19 positive employee or resident. Such notification must continue until 14 days after the last positive COVID-19 test result for an employee or resident in the facility. The protocol must specify how guardians and health care proxies will be informed of the positive COVID-19 test result;

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

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

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

(5) 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

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

2. Visitation.

(a) Except as otherwise provided in this or any subsequent orders, facilities must prohibit visitors from entering their facilities. For purposes of this order, visitation includes indoor and outdoor visitation unless otherwise specified.

(b) With the exception of the categories listed in subsection 2(e)(1)-(5) of this order, facilities may only permit visitation when the facility meets all of the following criteria:

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

(2) The facility is in a county where the current Risk Level on the **MI Safe Start Map** is Low, A, B, C, or D with the exception of outdoor visits which are permitted in counties where the current Risk Level is E;

(3) The local health department has not prohibited visitation at the facility.

(c) Facilities allowing visitation consistent with this order shall, without exception:

(1) 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;

(2) Limit the number of visitors per scheduled visit to two persons or fewer at any given time;

(3) In facilities with a MDHHS-required resident and staff testing regimen, require the testing of visitors, in accordance with section 3 of this order;

(4) Exclude visitors who are unwilling or unable to wear a face covering for the duration of their visit or follow hand hygiene requirements, and instead encourage those persons to use video or other forms of remote visitation. Further, require visitors to wear Appropriate PPE, and comply with the facility's visitor PPE requirements based on their infection control protocols;

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

(6) 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 (≥100.4°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;

(7) Post signage at all visitor entrances instructing that visitors must be assessed for symptoms of COVID-19 and may be required to test before entry, and instruct persons who have symptoms of COVID-19 to not enter the facility;

(8) Require that visitors follow physical distancing requirements and refrain from any physical contact with residents and employees, except that:

(A) Visitors under subsections 2(e)(3), 2(e)(5), and 2(e)(6) who are providing services requiring physical contact are not expected to abide by physical distance requirements between the visitor and the resident while

providing services, provided the visitors are wearing Appropriate PPE and the time spent within 6 feet of the resident is no longer than 15 minutes;

(B) Visitors participating in visits at the End of Life may have physical contact with a resident if that resident is not COVID-19 positive, the visitors are wearing Appropriate PPE, and the time spent within 6 feet of the resident is no longer than 15 minutes.

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

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

(11) 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;

(12) 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;

(13) Restrict visitor movement within the facility to reduce the risk of infection;

(14) Make accommodations to support visitation for residents who share a room with another resident. Visits for residents who share a room shall not be conducted in the resident's room.

(15) Make available an employee or volunteer trained in infection control measures at all times during the visit. This individual is not required to supervise a visit, but must be available for questions;

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

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

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

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

(d) Prior to offering outdoor visitation, the facility must assure all of the following:

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

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

(e) Subject to the testing requirements in section 3, visitation restrictions in section 2(b) do not apply to:

(1) 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.

(2) A parent, foster parent, or guardian of a resident who is 21 years of age or under.

(3) Visits that support ADLs or visits that are necessary to ensure effective communication with individuals with hearing, vision or speech impairments 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 or an individual identified by the resident in partnership with the local ombudsman to establish arrangements. Except in circumstances where the visitor tests positive for COVID-19, facilities that deny visitation under this section must provide written notice to the visitor with an explanation of why visitation is being denied. The denial notice must also be sent to MDHHS and the LTC ombudsman.

(4) Visits that occur when a resident is in serious or critical condition or in hospice care. Except in circumstances where the visitor tests positive for COVID-19, facilities that deny visitation under this section must provide written notice to the visitor with an explanation of why visitation is being denied. The denial notice must also be sent to MDHHS and the LTC ombudsman.

(5) Medical service providers such as hospice providers, podiatrists, dentists, durable medical equipment providers, social workers and other behavioral health providers, speech pathologists, occupational therapists, physical therapists, and other health care providers. 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.

(6) Non-medical service providers, such as hairdressers, nail salon technicians, cosmetologists, and providers of religious or spiritual services, when it is determined by a qualified medical professional 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.

(7) Resident physicians or other clinical students.

(8) Volunteers who have been trained in infection control measures and are supporting visitation (e.g. scheduling visits, conducting screening of visitors, escorting visitors or residents to visitation location, and/or monitoring visits for infection control compliance).

3. Testing.

(a) Testing shall be required prior to entry for indoor visitation at facilities in counties where the current Risk level is C or D on the **MI Safe Start Map**, except that:

(1) Testing shall not be required prior to visits under subsections 2(e)(1) and visits at the End of Life.

(2) Testing requirements for visitors under subsections 2(e)(5)-(8) must be the same as for similar staff working in the facility.

(3) For visitors under subsections 2(e)(2)-(4), testing shall be required prior to indoor visitation for facilities in counties where the current Risk level is C, D, or E on the **MI Safe Start Map**.

(b) For the purposes of this order, when visitor testing is required facilities should conduct point of care testing of visitors whenever possible. When point of care testing is not available, facilities must require visitors to be tested on their own within 72 hours of coming to the facility and require proof of negative test results upon entry.

4. Definitions. 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, at minimum, the Personal Protective Equipment that MDHHS recommends in the most recent 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) “Communal dining and internal group activities” means dining areas and group activities among residents in facilities that house more than six individuals.

(e) “Confirmed COVID-19 positive employee or resident” means a case of COVID-19 originating in the facility, including those involving staff or residents (“facility-onset cases”)

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

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

(h) “Outbreak testing” is the testing of residents and staff that begins after any new case arises in facility and continues until testing identifies no new cases of COVID-19 infection among staff or residents for a period of at least 14 days since the most recent positive result.

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

(j) “Principal symptoms of COVID-19” are fever, uncontrolled cough, or atypical new onset of shortness of breath or at least 2 of the following not explained by a known physical condition; loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain.

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

(l) “Serious or critical condition or in hospice care” includes residents enrolled in hospice services, regardless of whether the resident appears to be in serious or critical condition or at the End of Life, residents receiving End of Life care who are not enrolled in hospice, residents whose wellbeing is at significant risk, based on the clinical judgment of a treating medical professional, where family visits are a potentially effective intervention, and residents who experience a significant adverse change of condition.

(m) “End of Life” is as determined and documented by a qualified medical professional.

5. Implementation.

(a) Nothing in this order should be taken to modify, limit, or abridge protections provided by state or federal law for a person with a disability.

(b) Under MCL 333.2235(1), local health departments are authorized to carry out and enforce the terms of this order.

(c) Law enforcement officers, as defined in the Michigan Commission on Law Enforcement Standards Act, 1965 Public Act 203, MCL 28.602(f), are deemed to be "department representatives" for purposes of enforcing this order, and are specifically authorized to investigate potential violations of this order. They may coordinate as necessary with the appropriate regulatory entity and enforce this order within their jurisdiction.

(d) 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.

(e) The October 6, 2020 order entitled Requirements for residential care facilities is rescinded as of the effective date of this order. Nothing in this order shall be construed to affect any prosecution based on conduct that occurred before the effective date of this order.

(g) Consistent with any rule or emergency rule promulgated and adopted in a schedule of monetary civil penalties under MCL 333.2262(1) and applicable to this order, violations of this order are punishable by a civil fine of up to $1,000 for each violation or day that a violation continues.

(h) 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 on October 26, and remains in effect until lifted.

Date: October 21, 2020

Robert Gordon, Director
Michigan Department of Health and Human Services

MDHHS residential care epidemic order (PDF)

RELATED CONTENT

Rescission of Emergency Orders

FAQs for the June 1, 2021 Gatherings and Face Mask Order

June 1, 2021 Gatherings and Face Mask Order

May 21, 2021 - Requirements for Residential Care Facilities - Rescission of March 17, 2021

FAQs for the May 15, 2021 Gatherings and Face Mask Order

May 15, 2021 Gatherings and Face Mask Order

FAQs for the May 6, 2021 Gatherings and Face Mask Order

Testing in Skilled Nursing Facilities, Homes for the Aged, and Adult Foster Care Facilities Rescission of October 28, 2020 Order

May 6, 2021 Gatherings and Face Mask Order

FAQs for the April 19, 2021 Gatherings and Face Mask Order

April 19, 2021 - Gatherings and Face Mask Order

FAQs for the March 19, 2021 Gatherings and Face Mask Order

March 31 - Gatherings and Face Mask Order Amendment

March 19 - Gatherings and Face Mask Order

March 17 - Requirements for Residential Care Facilities Rescission of March 2, 2021 Order

FAQs for the March 5, 2021 Gatherings and Face Mask Order

March 5, 2021 Gatherings and Face Mask Order

March 2, 2021 Requirements for Residential Care Facilities Rescission of December 8, 2020 Order

Mandatory Testing for Prison Staff

Gatherings and Face Mask Order

COPYRIGHT 2021 STATE OF MICHIGAN