Gathering Prohibition and Face Covering Order

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 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 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.

I therefore order that:

1. Definitions.

   (a) "Child care organizations" means that term as defined by section 1(b) of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111(b)) and day, residential, travel, and troop camps for children (as defined by Rule 400.11101 of the Michigan Administrative Code).

   (b) "Close contact" means being within six feet of an individual for fifteen minutes or longer.

   (c) "Face covering" means a covering that covers at least the nose and mouth.

   (d) "Food service establishment" means that term as defined in section 1107(t) of the Food Law, 2000 PA 92, as amended, MCL 289.1107(t).

   (e) "Employee" means that term as defined in section 2 of the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended, MCL 408.932, and also includes independent contractors.

   (f) "Gathering" means any occurrence where two or more persons from more than one household are present in a shared space.

   (g) "Organized sports" means competitive athletic activity requiring skill or physical prowess and organized by an institution or by an association that sets and enforces rules to ensure the physical health and safety of all participants ("sports organizer" or "sports organizers").

(h) “Region 6” means that region as defined in Attachment A to this order.

(i) “Symptoms of COVID-19” means fever, an uncontrolled cough, new onset of shortness of breath, or at least two of the following not explained by a known medical or physical condition: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain.

2. Attendance limitations at gatherings.

(a) The restrictions imposed by this section do not apply to the incidental gathering of persons in a shared space, including an airport, bus station, factory floor, food service establishment, shopping mall, public pool, or workplace.

(b) Gatherings are permitted only as follows:

(1) Indoor gatherings of up to 10 persons occurring at a residence are permitted (face coverings are strongly recommended for such gatherings);

(2) Indoor gatherings of up to 10 persons occurring at a non-residential venue are permitted provided each person at the gathering wears a face covering except as provided in section 6 of this order;

(3) Indoor gatherings of more than 10 and up to 500 persons occurring at a non-residential venue are permitted only to the extent that the organizers and venue:

(A) In venues with fixed seating, limit attendance to 20% of seating capacity of the venue, provided however that gatherings at up to 25% of seating capacity are permitted in Region 6;

(B) In venues without fixed seating, limit attendance to 20 persons per 1,000 square feet in each occupied room, provided however that gatherings of up to 25 persons per 1,000 square feet in each occupied room are permitted in Region 6;

(C) Require that each person at the gathering wears a face covering except as provided in section 6 of this order.

(4) Outdoor gatherings of up to 100 persons occurring at a residence are permitted (face coverings are strongly recommended for such gatherings);

(5) Outdoor gatherings of up to 100 persons occurring at a non-residential venue are permitted provided that each person at the gathering wears a face covering except as provided in section 6 of this order;

(6) Outdoor gatherings of more than 100 and up to 1,000 persons occurring at a non-residential venue with fixed seating are permitted only to the extent that the organizers and venue:

(A) In venues with fixed seating, limit attendance to 30% of seating capacity;

(B) In venues without fixed seating, limit attendance to 30 persons per 1,000 square feet, including within any distinct area within the event space;

(C) Require that each person at the gathering wear a face covering except as provided in section 6 of this order.

(c) Gatherings are permitted for the following purposes notwithstanding the requirements of subsection (b) of this section:

(1) Voting or election-related activities at polling places;

(2) Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;

(3) Gatherings for the purpose of engaging in organized sports held in accordance with section 8 of this order;

(4) Students in a classroom setting or children in a daycare setting.

(d) Organizers and venues hosting gatherings permitted under subsection (b) of this section must ensure that persons not part of the same household maintain six feet of distance from one another, including by designing the gathering to encourage and maintain distancing.

3. Capacity restrictions. In addition to the attendance limitations imposed by section 2 of this order, the following gathering restrictions apply:

(a) Except in Region 6, a gathering at a retail store, library, or museum may not exceed 50% of total occupancy limit established by the State Fire Marshal or a local fire marshal.

(b) Gatherings at recreational sports and exercise facilities, such as gymnasiums, fitness centers, recreation centers, exercise studios, bowling centers, roller rinks, ice rinks, and trampoline parks are prohibited under any of the following circumstances:

(1) If they exceed 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal;

(2) If there is less than six feet of distance between each workout station.

(c) Gatherings in waiting rooms at outpatient health-care facilities, veterinary clinics, personal care services, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain six

feet of distance (this system should include a policy that patients wait in their cars for their appointment to be called, if possible).

(d) Gatherings at professional sports and entertainment facilities, including arenas, cinemas, concert halls, performance venues, sporting venues, and stadiums and theaters, are prohibited unless the venue is designed to ensure that patrons not of the same household maintain six feet of distance (e.g. stagger group seating upon reservation, close off every other row, etc.).

(e) Gatherings at outdoor pools may not exceed 50% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.

(f) Gatherings at indoor pools may not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.

(g) Gatherings at non-tribal casinos may not exceed 15% of total occupancy limits established by the State Fire Marshal or a local fire marshal.

4. Protection of workers.

(a) Gatherings of employees in the workplace are prohibited under any of the following circumstances:

(1) Except in Region 6, if not strictly necessary to perform job duties, provided however that, where gatherings are necessary, employees must still maintain six feet of distance from one another where practicable;

(2) If employees not otherwise required to wear face coverings cannot maintain six feet of distance from others;

(3) If employees not otherwise required to wear face coverings occupy the same indoor shared space, such as conference rooms, restrooms, and hallways;

(b) Employees who are subject to a recommendation to isolate or quarantine consistent with CDC guidance; have been instructed to remain home by a health or public health professional; or who are awaiting a COVID-19 test or the results of a COVID-19 test after having symptoms of COVID-19, must not be present in a gathering at work until the employee is advised by a health or public health professional that they may return to work, or the following conditions are met:

(1) 24 hours have passed since the resolution of fever without the use of fever-reducing medications; and

(2) 10 days have passed since their symptoms first appeared or since they administered a COVID-19 test that yielded the positive result, if applicable; and

(3) Other symptoms have improved.

(c) Employers must not require workers to gather with other persons at work in violation of this order.

(d) All businesses or operations that require their employees to gather with other persons for work must conduct a daily entry self-screening protocol for all employees or contractors entering the workplace, including, at a minimum, a questionnaire covering symptoms of COVID-19 and suspected or confirmed exposure to people with possible COVID-19.

5. Face covering requirement at gatherings.

(a) A person responsible for a business, government office, school, or other operation, or an agent of such person, must not allow indoor gatherings of any kind unless they require individuals in such gatherings (including employees) to wear a face covering, subject to the exceptions in section 6 of this order. For schools in Region 6, the wearing of face coverings is strongly recommended, but not required.

(b) A person responsible for a business, government office, school, or other operation, or an agent of such person, may not assume that someone who enters the operation without a face covering falls in one of the exceptions specified in section 6 of this order, including the exception for individuals who cannot medically tolerate a face covering. An individual's verbal representation that they are not wearing a face covering because they fall within a specified exception, however, may be accepted.

(c) All child-care organizations must not permit gatherings unless face coverings are worn by:

(1) All staff and all children 2 years and older when on a school bus or other transportation provided by the child-care organization or camp;

(2) All staff and all children 4 years and older when in indoor hallways and common areas. Face coverings should be encouraged for children 2 years and older when in indoor hallways; and

(3) All staff and all children 5 years and older when in classrooms, homes, cabins, or similar indoor settings. Face coverings should be encouraged for children 2 years and older when in these settings.

(d) A person responsible for establishments open to the public, or an agent of such person must:

(1) Post signs at entrances instructing customers of their legal obligation to wear a face covering when inside the store; and

(2) Post signs at entrances informing customers not to enter if they are or have recently been sick.

6. Exceptions to face covering requirements. Although a face covering is strongly encouraged even for individuals not required to wear one (except for children under the age of 2), the requirement to wear a face covering in sections 2, 5 and 6 of this order do not apply to individuals who:

(a) Except as otherwise provided in section 5 of this order, are younger than 5 years old (and, per guidance from the CDC, children under the age of 2 should not wear a face covering);

(b) Cannot medically tolerate a face covering;

(c) Are eating or drinking while seated at a food service establishment;

(d) Are exercising outdoors and able to consistently maintain six feet of distance from others;

(e) Are swimming;

(f) Are receiving a service for which temporary removal of the face covering is necessary;

(g) Are entering a business or are receiving a service and are asked to temporarily remove a face covering for identification purposes;

(h) Are communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication;

(i) Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a face covering would seriously interfere in the performance of their public safety responsibilities;

(j) Are at a polling place for purposes of voting in an election;

(k) Are engaging in a religious service;

(l) Are giving a speech for broadcast or to an audience, provided that the audience is at least six feet away from the speaker;

7. Food service establishments. Food service establishments must prohibit gatherings in all the following circumstances:

(a) In indoor common areas in which people can congregate, dance, or otherwise mingle;

(b) If there is less than six feet of distance between each party;

(c) If they exceed 50% of normal seating capacity;

(d) Anywhere alcoholic beverages are sold for consumption onsite, unless parties are seated and separated from one another by at least six feet, and do not intermingle.

(e) If they involve any persons not seated at a table or at the bar top (customers must wait outside the food service establishment if table or bar top seating is unavailable);

(f) Until the food service establishment has been deep cleaned consistent with Food and Drug Administration and CDC guidance, in the event that an employee of the food service establishment is confirmed positive for COVID-19 or shows symptoms of COVID-19 while at work.

8. Organized sports. Gatherings for the purpose of organized sports are permitted in accordance with this section. Organizers and venues of organized sports must ensure that:

(a) Athletes wear a face covering (except when swimming) or consistently maintain six feet of social distance (except for occasional and fleeting moments) when training for, practicing for, or competing in an organized sport. For example, an athlete participating in a football, soccer, or volleyball game would not be able to consistently maintain six feet of distance, and therefore would need to wear a face covering. Sports organizers must ensure that athletes comply with this section for each organized sporting event.

(b) They consider the guidance issued by this Department regarding how a sport can be played safely.

(c) For organized sports competitions, sports organizers must ensure either that the live audience is limited to the guests of the athletes (requiring face coverings for non-athletes consistent with section 6), with each athlete designating up to two guests, or that the event complies with gathering requirements of section 2(b) in this order.

(d) For indoor organized sports, sports organizers must ensure that no concessions are sold at the venue.

(e) Notwithstanding any other provision of this order, professional sports leagues and teams, including professional athletes engaged in individual sports, may engage in professional sports operations, provided that:

(1) The activities are conducted under a COVID-19 safety plan that is consistent with any guidance from the CDC and this Department; and

(2) Participants maintain six feet of distance from one another to the extent compatible with the sporting activity.

9. Contact Tracing.

(a) Gatherings are prohibited at the following facilities unless the facility maintains accurate records, including date and time of entry, names of patrons, and contact information, to aid with contact tracing, and denies entry for a gathering to any visitor who does not provide, at a minimum, their name and phone number:

(1) All businesses or operations that provide barbering, cosmetology services, body art services (including tattooing and body piercing), tanning services, massage services, or similar personal care services;

(2) Sports and entertainment facilities (except outdoor, unticketed sporting events), including arenas, cinemas, concert halls, performance venues, sporting venues, stadiums and theaters, as well as places of public amusement, such as amusement parks, arcades, bingo halls, bowling centers, skating rinks, and trampoline parks;

(3) Gymnasiums, fitness centers, recreation centers, exercise facilities, exercise studios, bowling centers, roller rinks, ice rinks, and like facilities.

(b) All businesses or operations that provide in-home services, including cleaners, repair persons, painters, and the like must not permit their employees to gather with clients unless the business maintains accurate appointment records, including date and time of service, name of client, and contact information, to aid with contact tracing.

10. 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) Neither a place of religious worship nor its owner is subject to penalty under this order for allowing religious worship at such place. No individual is subject to penalty under this order for engaging in religious worship at a place of religious worship.

(e) 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.

(f) The October 5, 2020 order entitled Gathering Prohibition and Mask Order is rescinded. 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 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 9, 2020

Robert Gordon, Director
Michigan Department of Health and Human Services

Gathering Prohibition and Face Covering 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

March 31 - Gatherings and Face Mask Order Amendment

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

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

FAQs for the February 4th Gatherings and Face Mask Order

COPYRIGHT 2021 STATE OF MICHIGAN