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

Emergency Order Under MCL 333.2253 – Additional exceptions to temporary restrictions on entry into 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 or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services 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. And in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, the Governor issued Executive Order 2020-33 on April 1, 2020. This order expanded Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. On April 30, 2020, finding that COVID-19 created emergency and disaster conditions across the State of Michigan, the Governor issued Executive Order 2020-67 to continue the emergency declaration under the Emergency Powers of the Governor Act, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the Emergency Management Act. On May 22, 2020, the Governor issued Executive Order 2020-99, declaring a state of emergency and a state of disaster under the Emergency Powers of the Governor Act and, to the extent permissible, under the Emergency Management Act.

On August 28, 2020, the Governor reissued the "Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities" order (Executive Order 2020-174), which established a new set of restrictions pertaining to these care facilities. Section 1 of that order provides that its restrictions apply to care facilities "[e]xcept as otherwise provided by the order of the Director of the Department of Health and Human Services." The order further provides that "[t]he Director of DHHS may issue orders and directives to implement this order, including to specify exceptions to section 1 of this order." The absence of visitors has been difficult for many facility residents; in some cases, a resident's health and wellbeing may be at significant risk because visitors have not been permitted.

On June 30, 2020, I issued an epidemic order entitled "Emergency Order Under MCL 333.2253 – Exceptions to temporary restrictions on entry into certain facilities" establishing exceptions to the "Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities" executive order. The order permitted limited visitation for the range of residential care facilities, namely homes for the aged, nursing homes, adult foster care facilities, hospice facilities, substance abuse disorder residential facilities, independent living facilities, and assisted living facilities (referred to as "facilities" in this order).

This order expands upon the June 30, 2020 order, leaving in place the visitation permitted under that prior order and allowing additional visitations to these facilities, based upon the recommendations of the Michigan Nursing Homes COVID-19 Preparedness Task Force and upon the Department's review of epidemiological data over recent weeks and practice in other states.

I therefore order that:

1. 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.

2. 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.

3. For purposes of applying Executive Order 2020-174 and subject to section 4 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.

4. Facilities allowing visitation consistent with this order must:

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 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. Consistent with Executive Order 2020-174, 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. Require that visitors follow social distancing requirements and refrain from any physical contact with residents and employees.

k. 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;

l. Advise residents and visitors to not share food;

m. Communicate with residents and their families to inform them of updated visitation protocols;

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

5. For purposes of this order, "visitors" means a person who, but for this order, would be prohibited from entering health care facilities under Section One of Executive Order 2020-174.

6. 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 September 15, 2020 and remains in effect until lifted.

Date: September 10, 2020

Robert Gordon

Robert Gordon, Director

Michigan Department of Health and Human Services