



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

ELIZABETH HERTEL
DIRECTOR

May 4, 2021

Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order

Michigan law imposes on the Michigan Department of Health and Human Services (MDHHS) a duty to continually and diligently endeavor to “prevent disease, prolong life, and promote the public health,” and gives the Department “general supervision of the interests of the health and life of the 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).

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. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic.

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 those posed by COVID-19. MCL 333.2253(1) provides that:

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 from the United States District Court, 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.”); *id.* (McCormack, C.J., concurring in part and dissenting in part, 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 requiring the use of mitigation measures at gatherings as a condition of hosting such gatherings.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan. As of May 3, 2021, Michigan had seen 849,420 confirmed cases and 17,771 confirmed deaths attributable to COVID-19. 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 2020. Strict preventative measures and the cooperation of Michiganders drove daily case numbers dramatically down to fewer than 200 confirmed cases per day in mid-June, greatly reducing the loss of life. Beginning in October, Michigan again experienced an exponential growth in cases. New cases peaked at nearly 10,000 cases per day in mid-November, followed by increases in COVID-19 hospitalizations and deaths.

In November 2020 MDHHS issued an order enacting protections to slow the high and rapidly increasing rate of spread of COVID-19. Cases, hospitalizations, and deaths remained high through early December,

threatening hospital and public health capacity. These protections were sustained by subsequent orders through mid-January. These orders played a crucial role in slowing the spread in Michigan and had brought new cases down to about 1,500 per day. This decrease in cases helped prevent Michigan's healthcare system from being overwhelmed with a holiday surge. Beginning in late January 2021, in light of the reduction in cases, MDHHS issued orders permitting indoor dining and contact sports. On March 19, 2021, MDHHS issued an order requiring testing for youth sports.

Cases dropped to under 1,000 per day in mid-February. However, trends shifted and cases increased to a seven-day daily average of 6,555 on April 11. The statewide positivity peaked at 18.5% on April 8. Metrics approached all-time highs, and in some cases surpassed the peaks from the fall/winter surge. While the Spring 2021 surge saw more cases in persons who were under the age of 60, there remained a high number of cases seeking emergency care and hospitalizations. Healthcare capacity peaked in mid-April with 601 daily hospital admissions seen in Michigan. Individuals under the age of 60 accounted for nearly 50% of all new admissions.

Positivity, case rates, and hospitalizations have improved since the April peak, but all metrics remain high. Positivity remains above 12% and the case rate for Michigan is above 350 cases per million. As of May 3, there are still over 3,000 Michiganders hospitalized with COVID-19, and 15.9% of all available inpatient beds were occupied by patients who had COVID-19. During this time, Michigan had the highest number of cases and case rate in the nation, as well as COVID-19 hospital utilization, and COVID-19 ICU utilization according to data from the CDC and U.S. Health and Human Services. The state death rate was 6.5 deaths per million people on May 1, and there are approximately 450 weekly deaths in Michigan attributable to COVID-19. This is an increase of over 350% from the 1.4 deaths per million on March 9, 2020.

Even where COVID-19 does not result in death, and where Michigan's emergency and hospital systems are not heavily burdened, the disease can cause great harm. Recent estimates suggest that one in ten persons who suffer from COVID-19 will experience long-term symptoms, referred to as "long COVID." These symptoms, including fatigue, shortness of breath, joint pain, depression, and headache, can be disabling. They can last for months, and in some cases, arise unexpectedly in patients with few or no symptoms of COVID-19 at the time of diagnosis. A study published on April 6 in the medical journal *The Lancet* indicates that COVID-19 has been associated with a significantly increased risk of neurological and psychiatric disorders in the 6 months after a diagnosis. COVID-19 has also been shown to damage the heart and kidneys. Furthermore, racial and ethnic minority groups in Michigan have experienced a higher proportion of "long COVID." The best way to prevent these complications is to prevent transmission of COVID-19.

Since December 11, 2020, the Food and Drug Administration has granted emergency use authorization to three vaccines to prevent COVID-19, providing a path to end the pandemic. Michigan is now participating in the largest mass vaccination effort in modern history and is presently working toward vaccinating at least 70% of Michigan residents 16 years of age and older as quickly as possible. As of May 3, 50% of Michigan residents 16 and older have received at least one dose of COVID-19 vaccine. And an increasing number and volume of therapeutics are available, such as monoclonal antibodies, which can help to reduce the severity of COVID-19 cases.

New and unexpected challenges continue to arise: in early December 2020, a variant of COVID-19 known as B.1.1.7 was detected in the United Kingdom. According to the CDC, this variant is roughly 50 percent more infectious than the original strain. On January 16, 2021, this variant was detected in Michigan. B.1.1.7 is currently the dominant strain of COVID-19 in Michigan and the United States. Michigan is second in the nation with respect to the number of B.1.1.7 variant cases detected. Michigan has also detected cases of variants B.1.351, P.1, and B.1.427/B.1.429, which experts continue to study and monitor closely. This further complicates the battle against COVID-19.

Data through May 1 indicate there are an average of 740 cases per day among those aged 10-19, the highest of any age group. As of April 29, local health departments had reported 311 new and ongoing

outbreaks among K-12 schools, with 73 of those outbreaks reported in the week prior. Additionally, there are 377 identified clusters among minors participating in school and club sports since January 2021. To promote the continued safe operation of in-person schools, additional mitigation measures related to youth sports activities are warranted.

Considering the above, and upon the advice of scientific and medical experts, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I have also, subject to the grant of authority in 2020 PA 238 (signed into law on October 22, 2020), herein defined the symptoms of COVID-19 based on the latest epidemiological evidence. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to restrict gatherings and 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) “Camp” means a day, residential, travel, or troop camp for children (as defined by Rule 400.11101(1)(q) of the Michigan Administrative Code).
- (b) “Child care organization” means that term as defined by section 1(b) of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111(b).
- (c) “Contact sports” means sports involving more than occasional and fleeting contact, including: football; basketball; rugby; field hockey; soccer; lacrosse; wrestling; hockey; boxing; futsal; martial arts with opponents; and other sports meeting those criteria.
- (d) “Competition” means a game of skill played between opposing teams.
- (e) “Employee” means that term as defined in section 2(c) of the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended, MCL 408.932(c), and also includes independent contractors.
- (f) “Entertainment and recreational facility” includes: auditoriums; cinemas; concert halls; performance venues; sporting venues; theaters; night clubs; strip clubs; water parks; archery ranges; amusement parks; arcades; bingo halls; bowling centers; casinos; gun ranges; laser tag arenas; trampoline parks; and the like.
- (g) “Exercise facility” means a location in which individuals participate in individual or group physical activity, including gymnasiums, fitness centers, and exercise studios.
- (h) “Face mask” means a tightly woven cloth or other multi-layer absorbent material that closely covers an individual’s mouth and nose.
- (i) “Fully vaccinated persons” means persons for whom at least two weeks has passed after receiving the final dose of an FDA-approved or authorized COVID-19 vaccine.
- (j) “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).
- (k) “Gathering” means any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.

- (l) “Household” means a group of persons living together in a shared dwelling with common kitchen or bathroom facilities. In dwellings with shared kitchen or bathroom facilities occupied by 20 or more unrelated persons, households are defined by individuals who share a bedroom.
- (m) “Indoors” means within a space that is fully or partially enclosed on the top, and fully or partially enclosed on two or more contiguous sides. Additionally, in a space that is fully or partially enclosed on the top, and fully or partially enclosed on two non-contiguous sides, any part of that space that is more than 8 feet from an open side is indoors.
- (n) “Non-contact sports” means sports that are not contact sports.
- (o) “Outdoors” means a space that is not indoors.
- (p) “Organized sports” means competitive athletic activity requiring skill or physical prowess and organized by a sports organizer.
- (q) “Practice” means a training session for a game of skill, involving only members of a single team.
- (r) “Principal symptoms of COVID-19” means at least 1 of 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. Per section 1(j) of 2020 PA 339, this definition represents the latest medical guidance, and serves as the controlling definition.
- (s) “Sports organizer” means an association or other organization that sets and enforces rules to ensure the physical health and safety of all participants for an organized sport. Sports organizers at the sub-association level must follow all health and safety rules and procedures set by the association of which they are a member.
- (t) “Stadiums and arenas” means venues with fixed seating for at least 5,000 spectators.

2. General capacity limitations at gatherings.

(a) Indoor gatherings:

- (1) Are prohibited at residential venues, except where no more than 15 persons from no more than 3 households are gathered.
- (2) Are prohibited at non-residential venues, except where no more than 25 persons are gathered.

(b) Outdoor gatherings are permitted only as follows:

- (1) At residential venues, where 50 persons are gathered. Or, where density does not exceed 20 persons per 1,000 square feet of outdoor space, up to 300 persons may be gathered;
- (2) At non-residential venues, where 300 or fewer persons are gathered.

(c) The limitations to gatherings in sections 2(a) and 2(b) do not apply to:

- (1) Incidental gatherings of persons in a shared space, such as frequently occur in an airport, bus station, exercise facility, food service establishment, shopping mall, or public pool, except as prohibited in section 3;

- (2) Workplace gatherings that occur consistent with the Emergency Rules issued by MIOSHA on October 14, 2020, and subsequently extended;
 - (3) Voting or official election-related activities;
 - (4) Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
 - (5) Education and support services at public, nonpublic, and boarding schools serving students in prekindergarten through grade 12;
 - (6) Children in a child care organization, after school program, or camp setting;
 - (7) Persons traveling on a school bus or public transit;
 - (8) Gatherings for the purpose of medical treatment, including mental health and substance use disorder support services;
 - (9) Residential care facilities, which are subject to the March 17, 2021, epidemic order entitled “Requirements for Residential Facilities,” or any replacement of that order;
 - (10) Cardiopulmonary resuscitation courses and swimming instruction courses;
 - (11) Proctored, nationally-administered admissions and certification examinations that are not available remotely, provided that examinees are spaced no less than 6 feet apart;
 - (12) Gatherings at entertainment and recreational facilities that comply with the restrictions set forth in section 3(a) of this order;
 - (13) Gatherings for the purposes of indoor group fitness, exercise, or sports that comply with the restrictions set forth in sections 4(b), 4(d), 4(e), and 6 of this order;
 - (14) Gatherings for public health or other emergency purposes;
 - (15) Gatherings of public bodies and attendees of meetings held by public bodies in compliance with the Open Meetings Act, MCL 15.261 *et seq.*
- (d) As a condition of hosting a gathering under this order, organizers and facilities must design the gathering to encourage and maintain physical distancing, and must ensure that persons not part of the same group maintain 6 feet of distance from one another to the extent possible.

3. Gathering restrictions for entertainment facilities, recreational facilities, and food service establishments.

- (a) Gatherings are prohibited at entertainment facilities and recreational facilities unless:
 - (1) Venues and activities held at those venues comply with masking and distancing requirements in this subsection. Venues that cannot consistently adhere to these requirements (e.g., water parks, dance floors at a nightclub, or children’s indoor playgrounds inasmuch as staff are not present to prevent physical contact) may not be open.
 - (A) Patrons must remain masked at all times, except when eating or drinking in designated areas;

- (B) Groups of patrons participating in activities together (such as those seated together at a concert or movie, or bowling in the same lane or group of lanes) must not exceed 25 persons indoors, or 300 persons outdoors;
 - (C) Patrons must be prevented from mingling with or engaging in physical contact with persons outside their group; and
 - (D) For sports practice and competition, participants must comply with the restrictions set forth in section 6;
- (2) If participating in stationary activities, groups are spaced or seated at least 6 feet apart. If participating in non-stationary activities, groups maintain a consistent 6 feet of distance from other groups at all times;
- (3) Consumption of food or beverages is permitted only where patrons are seated, groups of patrons are separated by at least 6 feet, no more than 6 patrons are seated at a table, and groups of patrons do not intermingle;
- (4) Venues that are also food service establishments, as a condition of offering food or beverages, ensure their designated dining areas comply with all requirements in subsection (b);
- (5) Venues abide by the following density limitations:
 - (A) Where applicable, occupancy must not exceed 50% of the limits established by the State Fire Marshal or a local fire marshal; and
 - (B) Groups must remain at least 6 feet apart at all times;
- (6) Venues abide by the following maximum capacity limitations:
 - (A) For indoor entertainment and recreational facilities, no more than 300 patrons may be gathered within any distinct space within the venue;
 - (B) For outdoor entertainment and recreational facilities, and for outdoor stadiums and arenas, no more than 1,000 patrons may be gathered unless the facility proceeds under subsection (G);
 - (C) At indoor stadiums and arenas with a fixed seating capacity of up to 10,000, no more than 375 patrons may be gathered;
 - (D) At indoor stadiums and arenas with a fixed seating capacity greater than 10,000, no more than 750 patrons may be gathered;
 - (E) At outdoor stadiums and arenas with a fixed seating capacity of up to 10,000, no more than 1,000 patrons may be gathered;
 - (F) At outdoor stadiums and arenas with a fixed seating capacity of greater than 10,000, no more than 1,500 patrons may be gathered;
 - (G) At outdoor entertainment and recreational facilities, outdoor stadiums and arenas that establish and abide by an infection control plan that complies with the MDHHS publication entitled Large Outdoor Events Guidance issued May 4, 2021, gatherings may not exceed 20% of the venue's fixed seating capacity or 20 persons per 1,000 square feet, whichever is greater. Such

venues must post their plan publicly, including on a public website. Infection control plans must be provided to the local health department at least seven days before scheduled events. Sports organizers of events occurring at outdoor stadiums and arenas proceeding under this subsection must administer a testing program as specified in the MDHHS publication entitled Interim Guidance for Athletics issued May 4, 2021.

(b) Gatherings are prohibited at food service establishments, whether indoor or outdoor, unless:

(1) Consumption of food or beverages is permitted only in a designated dining area where patrons are seated, groups of patrons are separated by at least 6 feet, no more than 6 patrons are seated together (at a table, booth, or group of fixed seats), and groups of patrons do not intermingle;

(2) Patrons are not permitted to gather in common areas in which people can congregate, dance, or otherwise mingle;

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

(4) At establishments offering indoor dining:

(A) The number of patrons indoors (or in a designated dining area of a multipurpose venue) does not exceed 50% of normal seating capacity, or 100 persons, whichever is less, provided, however, that this limitation does not apply to soup kitchens and shelters;

(B) At food service establishments, or the designated dining area of a multipurpose venue, indoor dining is closed between the hours of 11:00 PM and 4:00 AM;

(C) The venue displays, in a prominent location, the MDHHS “Dining During COVID-19” brochure.

(c) Gatherings at non-tribal casinos may not exceed 30% of total occupancy limits established by the State Fire Marshal or a local fire marshal.

4. **Gathering restrictions for other facilities.** In addition to the gathering limitations set forth elsewhere in this order, the following limitations apply to gatherings in the following facilities:

(a) A gathering at a retail setting, library, or museum must not exceed 50% of total occupancy limits established by the State Fire Marshal or a local fire marshal. Nevertheless, a retail store, library, or museum may permit one customer at a time to enter if strict adherence to the 50% total occupancy limit would otherwise result in closure. Spaces for indoor and outdoor dining, including food courts, must comply with the requirements for food service establishments as set forth in section 3(b).

(1) Retail stores must establish lines to regulate entry and checkout, with markings for patrons to enable them to stand at least 6 feet apart from one another while waiting.

(b) At exercise facilities:

- (1) Gatherings must not exceed 30% of the total occupancy limits established by the State Fire Marshal or a local fire marshal;
 - (2) There must be at least 6 feet of distance between each occupied workout station and physical layout of the space must be established such that exercisers can move between stations while maintaining 6 feet of distance from others at all times; and
 - (3) Gatherings for group fitness activities or classes are permitted, provided that all persons maintain at least 6 feet of distance from others at all times and wear a face mask at all times.
- (c) Gatherings in waiting rooms at outpatient health care facilities, veterinary clinics, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same group maintain 6 feet of distance. To the extent possible, this system must include a policy that patients wait in their cars for their appointments to be called.
 - (d) Gatherings at an indoor pool not otherwise prohibited by this order must not exceed 30% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code. Gatherings at an outdoor pool not otherwise prohibited by this order must not exceed 50% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
 - (e) Gatherings at ice and roller rinks are permitted, provided that occupancy is limited to 10 persons per 1,000 square feet, including within the exercise space. Gatherings for the purpose of open skating are permitted.
 - (f) In facilities offering non-essential personal care services, including hair, nail, tanning, massage, traditional spa, tattoo, body art, piercing services, and similar personal care services, all services must be provided by appointment, and gatherings in waiting areas are prohibited.

5. Schools, colleges, technical schools, and universities.

- (a) Subject to local health department and school district authority, and consistent with the applicable restrictions in section 6, gatherings at public, nonpublic, and boarding schools are permitted for the purpose of conducting in-person instruction and extracurricular activities in prekindergarten through grade 12.
- (b) Gatherings at public, nonpublic, and boarding schools are permitted for the purpose of child care programs, tutoring and academic support, and for providing services to students in need, including food distribution, access to internet connectivity, and physical and mental health care services.
- (c) Gatherings at colleges and universities, trade schools, and career schools are permitted for the purpose of holding in-person classes and other events sponsored by the educational institution. The limits imposed by section 2(a) and 2(b) do not apply to such gatherings, but they remain subject to all other applicable requirements of this order.

6. Organized sports gathering restrictions.

- (a) Gatherings for the purpose of contact sports practice and competition are prohibited unless:
 - (1) Participants remain masked; or

- (2) Where it would be unsafe for participants to remain masked, all participants are tested consistent with the MDHHS publication entitled Interim Guidance for Athletics issued May 4, 2021.
- (b) Gatherings for the purpose of sports practice and competition are prohibited unless participants maintain 6 feet of distance from each other when not engaged in play.
- (c) Gatherings of non-participants for the purpose of observing sports practice and competition must be held consistent with section 3.
- (d) Sports organizers, venues, and teams must ensure that all gatherings for the purpose of sports competition and practice comply with the requirements of this order.
- (e) Even where it is not required, sports organizers are encouraged to administer a testing program as specified in the MDHHS publication entitled Interim Guidance for Athletics issued May 4, 2021.
- (f) Gatherings for the purpose of sports practice and competition involving persons age 13 to 19 are prohibited unless all such persons comply with a testing program as specified in the MDHHS publication entitled Interim Guidance for Athletics issued May 4, 2021.

7. Face mask requirement at gatherings.

- (a) All persons participating in gatherings are required to wear a face mask.
- (b) As a condition of gathering for the purpose of transportation, transportation providers must require all staff and patrons to use face masks, and must enforce physical distancing among all patrons to the extent feasible.
- (c) Except as provided elsewhere in this order, a person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, must prohibit gatherings of any kind unless the person requires individuals in such gatherings (including employees) to wear a face mask, and denies entry or service to all persons refusing to wear face masks while gathered.
- (d) A person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, may not assume that someone who enters the facility without a face mask falls within one of the exceptions specified in section 8 of this order, including the exception for individuals who cannot medically tolerate a face mask. An individual's verbal representation that they are not wearing a face mask because they fall within a specified exception, however, may be accepted.
- (e) A person responsible for a child care organization or camp, or an agent of such person, must not allow gatherings unless:
 - (1) Face masks are worn by all staff;
 - (2) A good faith effort is made to ensure that children aged 2 to 4 years wear a mask when participating in gatherings;
 - (3) All children 5 years and older wear a mask when participating in gatherings.
- (f) Participants in gatherings for any exercise activities, group fitness, or organized sports must comply with face mask requirements listed in the MDHHS publication entitled Interim Guidance for Athletics issued May 4, 2021.

8. **Exceptions to face mask requirements.** Although a face mask 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 mask in gatherings as required by this order does not apply to individuals who:
- (a) Are younger than 2 years old;
 - (b) Cannot medically tolerate a face mask;
 - (c) Are eating or drinking while seated in a designated area or at a private residence;
 - (d) Are participating in non-contact sports practice or competition outdoors;
 - (e) Are swimming;
 - (f) Are receiving a medical or personal care service for which removal of the face mask is necessary;
 - (g) Are asked to temporarily remove a face mask 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 mask would seriously interfere in the performance of their public safety responsibilities;
 - (j) Are engaging in a religious service;
 - (k) Are giving a speech for broadcast or to an audience, provided that the audience is at least 12 feet away from the speaker; or
 - (l) Are participating in a testing program specified in the MDHHS publication entitled Interim Guidance for Athletics issued May 4, 2021, and are engaged in practice or competition where the wearing of a mask would be unsafe;
 - (m) Are engaging in an activity that requires removal of a mask not listed in another part of this section, and are in a facility that provides ventilation that meets or exceeds 60 ft³/min of outdoor airflow per person;
 - (n) Are at a residential gathering, and are fully vaccinated and not experiencing the principal symptoms of COVID-19;
 - (o) Are at an outdoor gathering with fewer than 100 persons, unless otherwise required to mask as an organized sport participant under Section 6(a).
9. **Contact tracing requirements for particular gatherings.**
- (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 hair, nail, tanning, massage, traditional spa, tattoo, body art, piercing services, or similar personal care services; and
 - (2) Exercise 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.
- (c) All dine-in food service establishments must maintain accurate records of the names and phone numbers of patrons who consume food or beverages on the premises, and the date and time of entry.
- (d) Upon request, businesses, schools, and other facilities must provide names and phone numbers of individuals with possible COVID-19 exposure to MDHHS and local health departments to aid in contact tracing and case investigation efforts.
- (e) Data collected under this section:
 - (1) Must not be sold, or used for sales or marketing purposes without the express consent of each patron;
 - (2) Must be protected as confidential information to the fullest extent of the law;
 - (3) Must not be provided to law enforcement or immigration officials except upon receipt of a lawful subpoena from a court or other lawful court order;
 - (4) Must be retained for 28 days by the collecting organization, after which time the data must be destroyed. If facilities use existing data to fulfill this requirement, they may instead follow their own pre-existing data retention and destruction policies at the conclusion of the 28-day retention period.

10. Implementation.

- (a) Nothing in this order modifies, limits, or abridges 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, each 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) Nothing in this order affects any prosecution or civil citation based on conduct that occurred before the effective date of this order.
- (g) Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their

authority, or protections guaranteed by the state or federal constitution under these emergency circumstances.

- (h) Consistent with MCL 333.2262, violations of this order are punishable by a civil fine of up to \$1,000. 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 takes effect on May 6, 2021, at 12:01 AM, at which time the April 19, 2021, order entitled Gatherings and Face Mask Order is rescinded. This order remains in effect through May 31, 2021, at 11:59 PM. Persons with suggestions and concerns are invited to submit their comments via email to COVID19@michigan.gov.

On May 5, 2021, this order was edited to correct a typographical error in Section 3(a)(6)(B).

Date: May 4, 2021

Elizabeth Hertel, Director
Michigan Department of Health and Human Services