

STATE AND LOCAL PUBLIC HEALTH EMERGENCY ORDERS

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House Bill 6314 as introduced
Sponsor: Rep. Ben Frederick
Committee: Health Policy
Complete to 11-4-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 6314 would amend the Public Health Code to revise provisions concerning the ability of the Department of Health and Human Services (DHHS) and county health officers to issue emergency orders to protect public health in the event of an epidemic and the circumstances under which those orders would be enforceable.

On October 2, 2020, in a 4–3 opinion, the Michigan Supreme Court ruled that the governor did not have the authority to declare a state of emergency or issue emergency orders after April 30, 2020.¹ On October 5, DHHS Director Robert Gordon issued an emergency order,² asserting his authority under section 2253 of the Public Health Code, restricting gathering sizes, requiring face coverings in public spaces, and placing limitations on bars and other venues.

DHHS emergency order

Under the bill, before issuing an emergency order to control an epidemic, the director would have to consult, to the greatest extent possible, with the board of health, if applicable, of every *local health department* whose area served is affected by the emergency order.

Local health department is defined in the code as a county health department of a single county and its board of health, if any; a district health department and its board of health; or a city health department and its board of health, if any.

County emergency order

As now, a *county health officer* could also issue an emergency order to prohibit gatherings and establish procedures to ensure continuation of essential health services and enforcement of health laws. The bill would provide that those orders could be different from, but not more restrictive than, an emergency order issued by DHHS, if all the following conditions were met:

- The county health officer, in consultation with the state’s chief medical executive, determines that all the following are met:
 - The number of confirmed coronavirus cases in the applicable area is at or below 55 per million within a 14-day period.
 - The percentage of positive tests for coronavirus within the applicable area is at or below 5% within a 14-day period.
 - Each health facility in the applicable area maintains a surge capacity of at least 20% in admissions or patient transfers.
 - Hospitalizations for coronavirus within the applicable area have not increased by 25% or more within a 14-day period.

¹ <https://courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/Documents/2020-2021/161492/In%20re%20Certified%20Questions-OP.pdf>

² https://www.michigan.gov/documents/coronavirus/DRAFT_MDHHS_epidemic_order_-_Gatherings_masks_bars_sports_-_FINAL_704284_7.pdf

- Each health facility located in the applicable area has at least a 14-day supply of personal protective equipment on site.
- The applicable area has the ability to conduct 15 coronavirus tests per 10,000 residents per day and to receive test results within three days.
- The county health officer develops and implements a mitigation plan to slow and prevent the spread of coronavirus within the applicable area, following best practices developed by DHHS or the federal Centers for Disease Control and Prevention (CDC).

County health officer would mean the individual in charge of a ***qualified local health department*** or his or her authorized representative.

Qualified local health department would mean either a county health department of a single county and its board of health, if any, or a district health department and its boards of health, but only if the district health department comprises two or more counties.

If the area served by a qualified local health department included more than one county, the calculations and mitigation plan would have to be performed for each county separately. The calculations would not include individuals housed in state and federal correctional facilities, county jails, or ***congregate care settings***

Congregate care settings would mean residential environments where a group of individuals reside, meet, or gather in close proximity for either a limited or extended period of time.

An emergency order issued by a county health officer would apply to each county served by the qualified local health department, identified in the order, and meeting all of the requirements listed above. If a county no longer met two or more of the requirements during a seven-day period, the emergency order would no longer be valid as to that county and the county would instead be subject to the DHHS emergency order. However, if the county again met all the requirements listed above, the county health officer could issue a subsequent order.

If a person performed an act or omission that would typically be a violation of a DHHS emergency order, but that was in compliance with the applicable county emergency order, the person would not be considered in violation of the DHHS emergency order.

DHHS coronavirus website

Within 30 days after the bill took effect, DHHS would have to establish, or work with a third party to implement, a website with information on coronavirus in Michigan. The website would have to provide information accessible only to health care providers on the testing capacity of each Michigan COVID-19 testing site and laboratory and the estimated time period within which each provides test results.

Additionally, the website would have to provide all of the following information in a manner that is accessible to the public:

- For the state and for each county:
 - Number per day of coronavirus tests administered per 10,000 residents and the percentage of positive results.
 - Number per day of positive tests per million residents.
 - Number per day of coronavirus deaths.

- Percentage of patients presented to emergency departments with coronavirus symptoms.
- Cumulative number of cases, deaths, and recoveries.
- Prevalence of comorbidities (simultaneous presence of two or more diseases or medical conditions) in patients.
- Number of hospital beds and bed occupancy, disaggregated by type, and number of ventilators available and in use.
- For each county:
 - Cumulative number of adults hospitalized with suspected and confirmed cases of coronavirus.
 - Number of adults hospitalized with a confirmed case of coronavirus.
 - Number of suspected and confirmed cases of coronavirus for hospitalized pediatric patients and for adults hospitalized in intensive care units (ICUs).
 - Number of patients with confirmed cases who require a ventilator.
 - Number per day of coronavirus-related emergency department visits.
- For each hospital in Michigan:
 - Number of coronavirus patients, coronavirus patients in ICUs, and bed occupancy.
 - Day's supply of N95 masks, surgical masks, surgical gowns, eye protection, and exam gloves.
- For the state and for each county, concerning long-term facilities:
 - Number of resident cases, deaths, and recoveries.
 - Number of employee cases.
- For each long-term care facility in Michigan, described by county and facility name:
 - Cumulative number of resident cases and deaths.
 - Cumulative number of employee cases and deaths.
- Any other information DHHS considers appropriate.

MCL 333.2253 and 333.2453 and proposed MCL 333.2453a and 333.5116

FISCAL IMPACT:

House Bill 6314 would have fiscal implications for DHHS for responsibilities for data collection and public access, as well as consultations with local health departments on data and local emergency order decisions. The fiscal impact on local health departments would be based on local use of the option to establish emergency orders differing from DHHS. The costs to DHHS and local governments are significant for the COVID-19 pandemic responsibilities outlined in the bill, many of which are currently being carried out. Current costs are being supported by existing state, local, and federal appropriations, which may include federal appropriations specifically enacted for pandemic needs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.