



# Whitmer Admin Still Unilaterally Wielding Emergency Powers

Health department continues to issue COVID-19 'epidemic orders' for senior facilities

By Michael Van Beek | November 2022

In mid-September, President Joe Biden admitted the COVID-19 pandemic was over. But a few weeks later, Elizabeth Hertel, Michigan's health director, indicated just the opposite.

She didn't directly contradict the president, but Hertel did unilaterally issue new "epidemic orders" in October related to COVID-19.

Michigan law permits issuing orders like these only when the health director "determines that control of an epidemic is necessary to protect public health." That's why these latest orders are still based on the claim that "the COVID-19 pandemic continues to constitute an epidemic in Michigan." In fact, these orders declare that "it is necessary to restrict gatherings," even though they do no such thing, nor do any other state or local orders.

You probably haven't heard of these new state mandates. That's because they only apply to residential care facilities, such as nursing homes, assisted living centers and adult foster care facilities.

One requires regular COVID-19 testing of residents in these facilities. The other mandates social distancing and protocols for reporting positive

COVID-19 tests at the facilities, among other things. Both are continuations of policies created more than two years ago.

One problem with these orders is that they are

inconsistent with the latest official information from the federal government. In August, the CDC updated its guidance on COVID-19 so that the same rules apply for those who are up to date on their vaccines and those who are not. Since the vaccines do not prevent transmission of the virus that causes COVID-19, there's no justification for treating these groups differently.

But Hertel's latest epidemic orders still discriminate based on vaccination status. Some rules for these residential care facilities, such as physical distancing and mask wearing, only apply when non-fully vaccinated people are present. But the orders also rely

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on an outdated definition of “fully vaccinated.” They classify people who have had the original vaccines as fully vaccinated, but the CDC says people must have had at least one booster to meet that definition.

The more serious problem with these orders is the department’s misuse of emergency powers. These are, by definition, temporary powers, but the Whitmer administration continues to stretch them to new extremes. If these orders are truly necessary, the health department should follow the regular rulemaking process to implement them officially. State

officials are not entitled to make unilateral decisions for however long they like. This is one reason why Michigan needs to significantly reform its emergency power laws.

Available online at: [www.mackinac.org/v2022-31](http://www.mackinac.org/v2022-31)

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