

MEMORANDUM

DATE: April 16, 2020
SUBJECT: Impact of EO 2020-50 on Long-Term Care Facility Residents and Staff

Executive Order 2020-50 is not only completely unworkable but in fact is extremely dangerous to the lives of residents. The EO mandates unnecessary and excessive movement of patients leading to further spread of COVID-19. The entire concept of this EO breaks down because regional hubs do not have the capacity to meet the needs for all long-term care facility and hospital discharged COVID-19-affected patients. In addition, it is not clear in the order which provisions impact only nursing facilities or ALL long-term care facilities as defined in this order.

Furthermore, with immediate effect, long-term care facilities were given no time to make preparations to comply with this order, and under some provisions are likely currently out of compliance.

The many issues and flaws of this EO could have easily been avoided with better collaboration with all stakeholders. Providers are on the frontlines and know better than anyone the issues and challenges of this pandemic. It is everyone's goal that we implement the best policies to effectively combat this pandemic – collaboratively, we can develop the appropriate solution.

Mandate that facility with census below 80% establish a COVID-19 dedicated unit

Under Section III, Item 3 of the EO, the vast majority of nursing facilities will be mandated to create a dedicated hub, with no funding or PPE to care for COVID-19-affected residents. While most buildings will be forced to do this, many will not be able to because of physical plant restrictions, the lack of adequate PPE, and insufficient staff to care for these residents.

Even worse, this provision will introduce COVID-19 into units where it is not yet present, endangering residents who are the most vulnerable to this virus. Because of these dangers and restrictions, this provision should be eliminated.

Transfer of COVID-19-affected residents

Section III, Item 4 (b) and Item 5 of the EO is fundamentally flawed because it mandates the transfer of a COVID-19-affected resident to a regional hub, a hospital in the state, or to an alternate care facility, which are only located in southeast Michigan. This is an arbitrary mandate that is operationally and logistically unrealistic and will lead to the needless spread of COVID-19 and increased cases of deaths.

This concept is unsustainable and will quickly and completely overwhelm the identified regional hubs. For example, Region 1 of the MDHHS regional hub proposal includes much of the northern lower peninsula and all of the upper peninsula. MDHHS has identified as a regional hub one facility in Leelanau with a capacity of 25 beds. This means a COVID-19-affected resident from the upper peninsula would be transferred several hours away from their family and community, and this single building will not be able to handle the need of the entire region when also taking into account hospital discharges.

Additionally, these provisions require the transfer of a "COVID-19-affected resident", which includes an individual showing symptoms. This will likely result in the exposure to COVID-19 of a resident who may not actually be COVID-19 positive.

Section III, Item 2 of the EO requires a COVID-19-affected resident who is medically unstable to be transferred to the hospital. This provision creates a conflict for residents who have indicated in their advance directive they desire no further hospitalization. Facilities are now forced to decide between following the advanced directive or the EO.

Mandated admission of hospital discharges

Because this EO mandates the creation of dedicated units, Section III, Item 7 will mandate the spread of COVID-19. This section mandates every facility with a dedicated unit act as a regional hub without the funding and PPE support from the state. When coupled with Section III, Item 4 (b), this section is essentially a mandate that facilities take COVID-19-affected residents even if the facility is COVID-19 free – completely contrary to the purpose of the regional hub program. MDHHS communicated that the regional hubs would be given PPE and additional funding to help fill this purpose, with the understanding of the danger of discharging COVID-19-affected residents and introducing the virus in other facilities.

This provision would also create a situation where a patient discharged from the hospital, who is not COVID-19-affected, would be admitted into a COVID-19 unit and increase the risk of exposure.

Definitions

Section IV, Item 1 (f) includes home for the aged, adult foster care facility, and assisted living facilities into this EO. This was never contemplated in discussions with MDHHS or the administration, and these settings should be excluded from the EO. These settings are currently following CDC guidance on these issues.

Section IV, Item 1 (k) defines the regional hub as an entire facility that exclusively takes COVID-19 patients. The facilities identified as regional hubs by MDHHS are establishing only a dedicated unit, floor, or wing of a facility to care for COVID-19-affected residents. Under this definition, there are currently zero facilities identified as regional hubs.

Conclusion

There is a way to establish protocols that ensure the effectiveness of the state's response to COVID-19 while still protecting nursing facility residents, patients, and the community. To develop these solutions, there must be a collaborative process with ALL stakeholders, including nursing facility providers.