

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MIDWEST INSTITUTE OF HEALTH, PLLC,  
d/b/a GRAND HEALTH PARTNERS,  
WELLSTON MEDICAL CENTER, PLLC,  
PRIMARY HEALTH SERVICES, PC, AND  
JEFFERY GULICK,

Plaintiffs,

Case No. 1:20-cv-00414

vs.

GRETCHEN WHITMER, in her official  
capacity as Governor of the State of Michigan,  
DANA NESSEL, in her official capacity as  
Attorney General of the State of Michigan, and  
ROBERT GORDON, in his official capacity as  
Director of the Michigan Department of Health  
and Human Services,

Hon. Paul L. Maloney

Defendants.

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**\*\*\* EXPEDITED CONSIDERATION REQUESTED \*\*\***

**MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs move this Court for a Preliminary Injunction. Specifically, Plaintiffs seek an order enjoining Defendants from either directly or indirectly:

1. Enforcing against the Plaintiffs Executive Order 2020-17;
2. Enforcing against the Plaintiffs Executive Order 2020-92 or any similar subsequent Stay Home, Stay Safe order promulgated by Governor Whitmer; and
3. Enforcing against the Plaintiffs the emergency order issued on April 2, 2020 by Robert Gordon, the Director of the Michigan Department of Health and Human Services.

The basis for this motion is set forth in the attached memorandum in support, and in the Verified Complaint.

Expedited consideration of this motion is necessary because the relief requested may well be rendered moot before the motion is briefed under the usual briefing schedule. *See* W.D. Mich. LCivR 7.1(e). Defendants' Executive Orders prohibit the vast majority of the business and healthcare activities provided by the Plaintiffs Midwest Institute of Health, Wellston Medical Center, PLLC, and Primary Health Services, PC. If the motion is briefed and heard in accordance with the ordinary briefing schedule, these Plaintiffs may be forced to close their operations, thereby suffering irreparable harm that will be unable to remedy through injunctive relief.

Further, the Executive Orders prohibit these Plaintiffs from providing important and necessary medical care to many of their patients. Each of these Plaintiffs has patients whose symptoms and conditions have materially and dangerously worsened due to the Defendants'

prohibition of these Plaintiffs' provision of necessary and appropriate medical care. If the motion is briefed and heard in accordance with the ordinary briefing schedule, patients' health may continue to deteriorate in the interim, causing potentially dangerous conditions and unnecessary suffering that requires emergency care. This motion should be heard and decided on an expedited basis in order to permit these Plaintiffs to provide their patients with necessary medical care pending final resolution of this matter.

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Dated: May 18, 2020

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**PLAINTIFFS' BRIEF IN SUPPORT OF**  
**MOTION FOR PRELIMINARY INJUNCTION**

**\*\*ORAL ARGUMENT REQUESTED\*\***

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## **INTRODUCTION**

No one disputes that, in March 2020, there was a valid public-health emergency that called for swift executive action. But short-term emergencies pose unique, long-term temptations. When an executive is able to wield sweeping, unilateral power to rapidly respond to an emergency situation, it can be tempting for the executive to, retain unilateral power, unhindered by the compromise of competing interests inherent in the legislative process. If the executive chooses to continue the emergency indefinitely and sidelines the Legislature in the interim, governance of the State no longer resembles a democracy.

Those dangers are squarely present here. The Michigan Legislature permitted Governor Whitmer to take extraordinary and immediate executive action during the first month of Michigan's response to the COVID-19 pandemic and even granted a 23-day extension of her initial emergency declaration. But, recognizing that the emergency had ended, the Michigan Legislature declined to extend Governor Whitmer's declaration of a state of emergency beyond April 30, 2020. The Legislature's decision not to extend the state of emergency constituted its determination that, now that Michigan had found its bearings about the nature of the pandemic, the Legislature could resume its constitutionally mandated role of legislating based upon policy for what is no longer an emergency but a long-term challenge.

But Governor Whitmer did not respect the Legislature's decision to resume its ordinary policy-setting and law-making role. Instead, after admitting that the curve had flattened, Governor Whitmer simply re-declared exactly the same state of emergency that Michigan law required—and the Legislature directed—to be terminated. Under Governor Whitmer's interpretation of the relevant statutes, she may re-declare a state of emergency serially, for as long as she concludes that there is an "emergency."

COVID-19, like other infectious diseases, could easily last for years. The Governor's sweeping assertion that she can rule by emergency powers, potentially for years and without any regard for the Legislature, exceeds the scope of her statutory authority and violates the safeguard of the Michigan Constitution's Separation of Powers clause. Allowing the Governor's conduct to stand unchallenged would be a dangerous precedent to set, and it is the judiciary's role to act. "While the law may take periodic naps during a pandemic, [the courts] will not let it sleep through one." *Maryville Baptist Church, Inc. v. Beshear*, \_\_\_ F.3d \_\_\_, 2020 WL 2111316, at \*4 (6th Cir. May 2, 2020).

This lawsuit challenges Executive Orders 2020-17 and 2020-92, which criminalize the provision of all "non-essential" medical treatments, as well as travel to obtain such medical treatment, respectively. Those executive orders are predicated upon Governor Whitmer's improper attempts to re-declare a state of emergency that has already been terminated. They therefore cannot be applied to the Plaintiffs. And in any event, the executive orders are unconstitutionally vague; they violate procedural and substantive due process; and they violate the dormant commerce clause. In fact, at a press conference held on May 1, 2020, Governor Whitmer admitted that it is no longer necessary to prohibit non-essential medical procedures. According to Governor Whitmer,

We are encouraging anyone who has been holding off on surgery that really needs to be done, to get that scheduled and to proceed. Early on, it was really necessary because we had so few N95 masks, and gloves, and all of the important things that we needed to keep people safe as we were dealing with this influx of COVID-19 patients, so that we could use all of that PPE. Now, we've been able to build up enough that we can proceed with these other procedures, and we are encouraging hospital systems to move forward with that.

\* \* \*

[A]s for oncology surgeries, as for knee surgeries, those are things that should be scheduled and we're encouraging people to get that done.<sup>1</sup>

Despite the Governor's admission that there is no longer a need to prohibit "knee surgeries" and other non-essential medical procedures, EO 2020-17 has not been rescinded.

Absent injunctive relief, the executive orders may be enforced against the Plaintiffs, who may be subject to criminal penalties simply for providing and receiving medical treatment. The healthcare provider plaintiffs will also very likely be forced out of business, precluding their ability to provide needed medical care to patients.

This Court should grant preliminary injunctive relief and enjoin the Defendants from enforcing the Governor's executive orders against the Plaintiffs.

### **STATEMENT OF FACTS**

The following facts are taken from the Plaintiffs' verified complaint.

**A. The Plaintiffs are medical providers and a patient, each of whom has been restricted from providing (or receiving) non-essential medical care.**

Grand Health was established in 2008 and operates in Grand Rapids, Petoskey, and Grand Haven, Michigan. Its medical staff—eight licensed medical doctors and a full staff of physicians' assistants, dieticians, exercise physiologists, and behaviorists—provides weight loss solutions for patients. Grand Health's physicians provide bariatric surgery services and general surgery services, including laparoscopic cholecystectomy (gallbladder removal), appendectomy, and various types of hernia surgery and repair. Grand Health also provides endoscopic and colonoscopy services. All endoscopy services and pre- and post-operative care and medical

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<sup>1</sup> *Michigan Governor Gretchen Whitmer Press Conference Transcript May 1*, available at <https://www.rev.com/blog/transcripts/michigan-governor-gretchen-whitmer-press-conference-transcript-may-1> (last visited May 15, 2020).

programs take place at Grand Health's offices, but all surgeries occur at area hospitals, at which Grand Health's physicians have admitting privileges.

Grand Health and its patients have been enormously impacted by Governor Whitmer's prohibition against the provision of bariatric and "non-essential" medical services since March 21, 2020. Obesity is one of the highest risk factors for morbidity, and timely preventive care is vital. Many of Grand Health's weight-loss patients require surgery as a prerequisite for joint replacement surgery. The delay imposed by the prohibition of bariatric surgery has caused these individuals to suffer agonizing pain in the interim. Grand Health physicians have also seen an increase in cases where patients have been unable to obtain medical care until their condition has progressed far beyond a state in which it would have been easily treatable. For example, patients are obtaining surgery only after their gallbladder is gangrenous or their appendix is ruptured, instead of obtaining care when their condition was in a much less severe state. Although Grand Health continued to provide minimal levels of emergency care to its patients, Grand Health furloughed most of its employees and has pushed back almost all of its patients' procedures and post-operative support meetings. If the shutdown continues, Grand Health will almost certainly go out of business, and its medical staff will be out of work.

Wellston Medical Center and Primary Health Services (the "Clinics") are primary care clinics in West Michigan. They serve patients in primarily rural communities surrounding Wellston and Ludington. Over 90% of their patients are on Medicaid or Medicare. Much of the medical care they provide is not emergency care, but it is extremely important. For example, one patient had a stent in his ureter as a result of a kidney stone. The stent was supposed to be removed in two weeks. That procedure could not be scheduled for two months, resulting in a bladder and kidney infection. The infection required hospitalization and emergency surgery.

The Clinics have been devastated by the Governor's executive orders. Prior to March 2020, they treated an average of 90 to 100 patients per day, with 16 staff members. Under the Governor's executive orders, the clinics cannot perform what the Governor deems "non-essential procedures." When Executive Order 2020-17 was issued, the number of patients who were allowed to be treated dropped by 95%. If the shutdown continues, these clinics will almost certainly go out of business, and their medical staff will be out of work.

Plaintiff Jeffery Gulick was scheduled to undergo knee replacement surgery on his right knee on March 20, 2020, at Memorial Hospital in Owosso. Under the Governor's executive orders, his knee replacement surgery cannot go forward. Additionally, he could not receive follow up care for the knee replacement surgery that had been performed on his left knee. He is in excruciating pain and unable to get prescription pain medication until he can be seen on June 11. As a result of the debilitating pain, Mr. Gulick has had to reduce his work hours by 80%.

If permitted to fully reopen, there is no question that Grand Health can conduct its operations in a manner that will take precautions to prevent the transmission of the virus that causes COVID-19. All surgeries will occur at a hospital, consistent with surgical sanitation and COVID-19-compliant guidelines. Grand Health has implemented a plan under which its health care providers will screen all patients and staff when they come in, taking temperature and pulse oximeter readings. Most patients will wait in their car instead of in the waiting room; for those who cannot do so, Grand Health's waiting room has been reduced to half-occupancy, thereby allowing for social distancing. Finally, staff in Grand Health's endoscopy center will wear medical facemasks, including N95 respirator masks during any medical procedure, and will use half of the available surgical bays in order to ensure appropriate distance between medical teams.

The Clinics similarly can operate in a safe manner. If the Clinics reopen, all treatment will occur in a manner that is consistent with appropriate sanitation and COVID-19-compliant guidelines. Patients and staff will be screened for signs of COVID-19 and contact with those with COVID-19. No more than two patients per hour will be scheduled. Finally, staff and patients will wear facemasks, and the reception area will be equipped with a clear barrier.

**B. Governor Whitmer Issues Executive Orders Declaring a State of Emergency**

On March 11, 2020, Governor Whitmer issued Executive Order 2020-04, which proclaimed a state of emergency under both the Emergency Management Act (“EMA”), Mich. Comp. Laws § 30.403, and the Emergency Powers of the Governor Act of 1945 (“EPGA”), Mich. Comp. Laws § 10.31. (**Exhibit 1**). The order identified the COVID-19 pandemic as the basis for her declaration of a state of emergency under both statutory regimes.

There is a time limitation on the Governor’s exercise of emergency powers under these two statutes. The EPGA provides that all orders and rules promulgated by the governor during the state of emergency “shall cease to be in effect upon declaration by the governor that the emergency no longer exists.” Mich. Comp. Laws § 10.31(2). The EMA provides that a governor’s declaration of emergency may last only 28 days, after which “the governor shall issue an executive order or proclamation declaring the state of emergency terminated, unless a request by the governor for an extension of the state of emergency for a specific number of days is approved by resolution of both houses of the legislature.” Mich. Comp. Laws § 30.403(4).

On April 1, 2020, Governor Whitmer issued Executive Order 2020-33, which replaced Executive Order 2020-04, declared a state of emergency pursuant to the EPGA, and proclaimed a state of disaster and a state of emergency under the EMA. (**Exhibit 2**). These declarations were based on the same circumstances—that is, the dangers posed by the virus that causes COVID-19—that formed the basis of Executive Order 2020-04.



On April 1, 2020, Governor Whitmer also requested that the Michigan Legislature extend the state of emergency by an additional 70 days, as contemplated by the EMA. On April 7, 2020, the Michigan Senate and Michigan House of Representatives denied Governor Whitmer's request to extend the state of emergency for an additional 70 days. Instead, the Michigan Legislature extended the state of emergency declared by Governor Whitmer until April 30, 2020, but not beyond.

**C. Governor Whitmer Issues Numerous Executive Orders, Including an Order That Prohibits the Provision of All Non-Essential Medical Care**

Meanwhile, Governor Whitmer issued many additional executive orders, invoking emergency powers that the Governor claims flow from the state of emergency declared under Executive Orders 2020-04 and 2020-33. As of May 15, 2020, Governor Whitmer has issued more than 80 executive orders related to the COVID-19 pandemic, creating and changing substantive state law and regulations that impact and burden wide swaths of the economy. A chart summarizing the substantive changes to the law imposed by Governor Whitmer's executive orders is attached as **Exhibit 3**.<sup>2</sup>

One of these orders, Executive Order 2020-17 ("EO 2020-17"), took effect on March 21, 2020 and remains in effect until the termination of the Governor's declaration of emergency. It provides that, until the termination of the Governor's declaration of a state of emergency, most medical providers are prohibited from providing any "medical or dental procedure that is not necessary to address a medical emergency or to preserve the health and safety of a patient, as determined by a licensed medical provider." (**Exhibit 4**). EO 2020-17 specifically prohibits medical providers from providing any bariatric surgery and joint replacement surgery services, "except for emergency or trauma-related surgery where postponement would

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<sup>2</sup> The chart attached as Exhibit 3 was last updated as of 9 a.m. Eastern Time on May 18, 2020.

significantly impact the health, safety, and welfare of the patient.” A willful violation of EO 2020-17 is a misdemeanor.

At a press conference held on May 1, 2020, Governor Whitmer admitted that these restrictions are no longer necessary.<sup>3</sup> Despite the Governor’s admissions, EO 2020-17 has not been rescinded.

On May 3, 2020, Dr. Joneigh Khaldun, Chief Deputy Director for Health at the Michigan Department of Health and Human Services, issued a letter to Michigan health care providers, noting, “I recognize some have questions about Executive Order 2020-17, including what is allowable under the order and how to start to re-engage with patients for important care.” (**Exhibit 5**). Dr. Khaldun then provided her own interpretation of EO 2020-17: “This wording is intended to be flexible, preserve clinician judgement, and encourage consideration on an individual basis of which patient services can be safely delayed without resulting in a significant decline in health. **EO 2020-17 gives providers broad discretion to apply this standard.**”

It is not clear that Dr. Khaldun’s interpretation of EO 2020-17 has any weight. Further, regardless of Dr. Khaldun’s correspondence, EO 2020-17 continues to prohibit bariatric and joint replacement surgeries and continues to impose criminal penalties for those who willfully violate the order.

#### **D. Governor Whitmer Issues Several Stay-at-Home Orders Prohibiting Most In-Person Business Operations**

Along with her other executive orders, Governor Whitmer issued six iterations of “Stay Home, Stay Safe” orders, specifically Executive Orders 2020-21, 2020-42, 2020-59, 2020-70, 2020-77, and 2020-92. (**Exhibits 6, 7, 8, 9, & 10**). Each of those orders imposes sweeping

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<sup>3</sup> *Michigan Governor Gretchen Whitmer Press Conference Transcript May 1*, available at <https://www.rev.com/blog/transcripts/michigan-governor-gretchen-whitmer-press-conference-transcript-may-1> (last visited May 15, 2020).

limitations on Michigan citizens' ability to travel and prohibits large numbers of workers in Michigan from reporting to work.

The current version of the Stay Home, Stay Safe order is Executive Order 2020-92, which became effective on May 18, 2020 ("EO 2020-92"). (**Exhibit 18**). This order continues the restrictions of the previous Stay Home, Stay Safe orders, including the prohibition of any travel by any person for any purpose other than as outlined in Paragraph 8 of the executive order. Michigan citizens are prohibited under EO 2020-92 from traveling to seek medical or dental care that is not "necessary to address a medical emergency or to preserve the health and safety of a household or family member (including in-person procedures or veterinary services that, in accordance with a duly implemented non-essential procedure or veterinary services postponement plan, have not been postponed)." Like the previous Stay Home, Stay Safe orders, EO 2020-92 exempts certain workers from the travel ban and incorporates the definition of "critical infrastructure workers" as outlined in a March 19, 2020 memorandum prepared by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (the "March 19 CISA guidance"). (**Exhibit 11**). As with all of the other Stay Home, Stay Safe orders, a willful violation of EO 2020-92 is a criminal misdemeanor.

**E. Governor Whitmer's Executive Orders Cause Enormous and Immediate Confusion**

Almost immediately after her first stay-home order (Executive Order 2020-21) was issued, the Attorney General and Governor were inundated with requests for clarification of the

order. On March 24, 2020, Governor Whitmer observed, “We knew that there would be confusion, there always is.”<sup>4</sup>

On March 25, the Attorney General’s office admitted, “I think it’s a difficult executive order to really wrap your arms around.”<sup>5</sup> The Attorney General’s office explained that its process of clarifying the meaning of the order occurred on an ad hoc, case-by-case basis: “Every instance we get a call asking about whether or not businesses essential is being first reviewed by our office and then shared with the governor’s office so that we can begin to get some clarity around the executive order.” Despite the admitted confusion created by the orders, the Attorney General’s office reiterated that violating the order could result in criminal penalties and forced closure of a business by law enforcement.<sup>6 7</sup>

**F. The Legislature Declines to Extend the Governor’s Emergency Declaration, and the Governor Unilaterally Determines to Extend It Anyway**

Under the emergency powers statutes, the Governor has the power to declare an emergency, but the Legislature determines how long that emergency—and the Governor’s attendant powers to make laws on an emergency basis—lasts. The EMA requires the Governor to declare that a state of emergency is terminated after 28 days if the Legislature does not extend the

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<sup>4</sup> Mikenzie Frost, *Gov. Whitmer says she understands confusion surrounding stay-at-home, urging patience*, WWMT, Mar. 24, 2020, available at <https://wwmt.com/news/state/gov-whitmer-says-she-understands-confusion-surrounding-stay-at-home-urging-patience> (last visited May 12, 2020).

<sup>5</sup> Malachi Barrett, *Michigan Attorney General asks local law enforcement to handle violations of coronavirus stay home order*, MLive, Mar. 25, 2020, available at <https://www.mlive.com/public-interest/2020/03/michigan-attorney-general-asks-local-law-enforcement-to-handle-violations-of-coronavirus-stay-home-order.html> (last visited May 12, 2020).

<sup>6</sup> Virginia Gordan, *Local police to handle reports of violations of Gov. Whitmer’s stay-at-home order*, Michigan Radio, Mar. 25, 2020, available at <https://www.michiganradio.org/post/local-police-handle-reports-violations-gov-whitmers-stay-home-order> (last visited May 12, 2020).

<sup>7</sup> As noted in the Plaintiffs’ complaint, Defendant Gordon also issued an emergency order on April 2, 2020 (the “HHS order”). The validity of the HHS order also relies upon the validity of the Governor’s emergency declarations.

emergency, and the EPGA states that any emergency declared under that statute terminates when the Governor declares that the emergency is terminated. On April 30, 2020, the Michigan Legislature refused to extend Governor Whitmer's declarations of a state of emergency and a state of disaster. Immediately after the Michigan Legislature refused to extend her emergency declarations, Governor Whitmer issued on April 30, 2020 three additional Executive Orders: 2020-66, 2020-67, and 2020-68.

EO 2020-66 terminates the Governor's declarations of a state of emergency and a state of disaster based upon the COVID-19 pandemic, as required under the EMA. (**Exhibit 12**).

EO 2020-68, issued only minutes later, purports to re-declare under the EMA exactly the same states of disaster and emergency that the Legislature refused to extend and which had just been terminated under EO 2020-66. These renewed states of disaster and emergency purported to remain effective through May 28, 2020. (**Exhibit 13**).

EO 2020-67 states that a "state of emergency remains declared across Michigan" under the EPGA and that the state of emergency remains in effect until May 28, 2020. The state of emergency that EO 2020-67 references is exactly the same state of emergency that the Governor declared to be terminated in EO 2020-66. (**Exhibit 14**).

**G. The Attorney General Advises That Law Enforcement Officials Will Continue to Enforce Governor Whitmer's Executive Orders**

After the Legislature refused to extend the Governor's declaration of emergency past April 30, Attorney General Nessel issued a letter to law enforcement officials asserting that the Governor's executive orders continued to be valid under the EPGA and directing that law

enforcement officials continue to enforce the Governor's orders. Notably, the Attorney General did not defend the Governor's conduct under the EMA. (**Exhibit 15**).

Due to the harsh penalties imposed for violating EO 2020-17, EO 2020-92, and the HHS order—including criminal penalties and revocations of necessary business licenses—the Plaintiffs are in a very difficult position. Grand Health and the Clinics must choose between continuing to suspend most of their operations despite the fact that EOs 2020-17 and 2020-92 may be invalid, or operating under the threat of criminal prosecution and loss of their licenses. Mr. Gulick, for his part, is prohibited from traveling to obtain necessary medical treatment, because to do so is to incur criminal liability.

#### **H. Governor Whitmer Admits That The Emergency Situation No Longer Exists.**

Since Governor Whitmer's original declaration of a state of emergency in March, 2020, the projected impact of the COVID-19 pandemic has changed substantially. Initial projections based on some models projected widespread infection of the population that would overwhelm our hospitals and healthcare systems, resulting in a massive number of deaths. One model from the CDC projected between 160 to 214 million infections and between 200,000 to 1.7 million deaths nationwide.<sup>8</sup> Based upon those projections, government leaders made hard decisions on how to best to protect the health of their citizens, while acting within the bounds of controlling constitutions and established law.

Governor Whitmer justified her initial declaration of a state of emergency on the very important goal to "flatten the curve" and avoid overwhelming Michigan's healthcare system

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<sup>8</sup> Chas Danner, *CDC's Worst-Case Coronavirus Model: 214 Million Infected, 1.7 Million Dead*, N.Y. Magazine Intelligencer, updated Mar. 13, 2020, available at <https://nymag.com/intelligencer/2020/03/cdcs-worst-case-coronavirus-model-210m-infected-1-7m-dead.html>.

and hospitals. Thankfully, the goal of flattening the curve has been achieved, and the dire predictions of overwhelmed hospitals have not come to pass.

During a press conference on Monday, April 27, 2020, Governor Whitmer acknowledged that the curve has flattened in Michigan. Graphics depicted that while Governor Whitmer's administration anticipated 220,000 patients being hospitalized without social distancing efforts, there had only been 3,000 hospitalizations as of April 27. That is less than 1.4% of the projected COVID-19 hospitalizations underlying the Governor's declared states of emergency and disaster. According to data released by the State of Michigan, hospitals in the state are well-stocked with over 2,400 available ventilators, nearly 1,000 available ICU beds, and more than 7,000 available hospital beds.<sup>9</sup>

On May 7, 2020, Governor Whitmer announced a six-phase plan to reopen Michigan's economy titled "MI Safe Start." Governor Whitmer stated that Michigan was in the third phase, called the "Flattening" phase, in which "[c]ase growth is gradually declining."<sup>10</sup> But even in the Flattening phase, the reopening of the economy is strictly limited to only "[s]pecified lower-risk businesses with strict workplace safety measures." The Governor has not indicated when medical services deemed "non-essential" by her executive order will be permitted to resume.

In the Governor's view, Michigan will not reach the sixth "Post-pandemic" phase anytime soon. From the Governor's perspective, Michigan enters that phase only once the state has achieved "sufficient community immunity" and there is "high uptake of an effective therapy

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<sup>9</sup> <https://www.michigan.gov/coronavirus/0,9753,7-406-98159-523641--,00.html> (last updated May 11, 2020; last visited May 12, 2020).

<sup>10</sup> MI Safe Start: A Plan to Re-Engage Michigan's Economy, Gov. Gretchen Whitmer, available at [https://content.govdelivery.com/attachments/MIEOG/2020/05/07/file\\_attachments/1446147/Governor%20Whitmer%27s%20MI%20Safe%20Start%20Plan.pdf](https://content.govdelivery.com/attachments/MIEOG/2020/05/07/file_attachments/1446147/Governor%20Whitmer%27s%20MI%20Safe%20Start%20Plan.pdf) (published May 7, 2020; last visited May 12, 2020).

or vaccine.” The mumps vaccine holds the record for the fastest ever approved vaccine—with development and approval in 4 years.<sup>11</sup>

Governor Whitmer’s MI Safe Start Plan warns that at any time, “it is also possible to move backwards”—and reenter earlier phases of the emergency—“if risk increases and if we stop adhering to safe practices.” There is therefore a real possibility that Governor Whitmer continues for many months, if not years, to enact measures that burden the rights and liberties of individuals and businesses without legislative input. Instead of working in tandem with the Legislature to develop policy solutions to long-term economic and public-health challenges, Governor Whitmer has instituted a Michigan Economic Recovery Council (“MERC”), which is tasked with identifying sectors and industries that may reopen for business.<sup>12</sup> Unlike the Legislature, MERC is not representative of all industry sectors, nor is it representative of the citizens of Michigan.

Meanwhile, medical providers are on the brink of financial ruin, facing extreme revenue shortages caused by the Governor’s order forcing the postponement or cancellation of so-called “non-essential” procedures. Thousands of healthcare workers across Michigan have been furloughed or laid off.

The Plaintiffs will suffer immeasurable and irreparable harm if EOs 2020-17 and 2020-92 are continued and/or enforced against them. Mr. Gulick is being deprived of his basic right to travel to obtain necessary medical care. If Grand Health and the Clinics (collectively, the

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<sup>11</sup> Donald G. McNeil, Jr., *The Coronavirus in America: The Year Ahead*, New York Times, April 18, 2020, available at <https://www.nytimes.com/2020/04/18/health/coronavirus-america-future.html>.

<sup>12</sup> Detroit Regional Chamber, *Michigan Economic Recovery Council Advises Gov. Whitmer On Reopening Based On Risk, Workplace Environment, Geography*, available at <https://www.detroitchamber.com/covid19/michigan-economic-recovery-council-advises-gov-whitmer-on-reopening-based-on-risk-geography/> (last visited May 18, 2020).



“Provider Plaintiffs”) are prohibited from providing medical treatment, they will almost certainly become insolvent or be forced to permanently close their operations. At minimum, they will suffer irreparable harm in the form of lost business goodwill within the community and with their patients, particularly if they are perceived as engaging in conduct that the Governor’s executive orders have deemed criminal. Injunctive relief is necessary in this case.

### **ARGUMENT**

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). Each of these factors is met here.

#### **I. The Plaintiffs are likely to succeed on the merits of their claims.**

To satisfy the first prong of the preliminary-injunction analysis, the Plaintiffs must only demonstrate that the legal issues they raise are substantial enough to constitute “fair ground[s] for litigation and thus [require] more deliberate investigation.” *Roth v. Bank of Commonwealth*, 583 F.2d 527, 537 (6th Cir. 1978). “It will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for mere deliberate investigation.” *Brandeis Machinery & Supply Corp. and State Equipment Co. v. Barber-Geene Co.*, 503 F.2d 503, 505 (6th Cir. 1974). The Plaintiffs’ claims meet this standard.

#### **A. EO 2020-17 and EO 2020-92 are unenforceable because they are unsupported by a proper declaration of emergency.**

The sweeping provisions of EO 2020-17 and EO 2020-92 are enforceable only to the extent that they are authorized by the Governor’s powers under either the EMA or the EPGA.

Because the Governor has not properly exercised her powers under either statute, neither EO 2020-17 nor EO 2020-92 is enforceable.

**1. Governor Whitmer cannot re-declare an emergency under the EMA that the Legislature has specifically refused to renew.**

The EMA unambiguously states that, unless both houses of the Michigan Legislature approve the Governor's request for an extension of a declared state of disaster or state of emergency with 28 days, then "the governor shall issue an executive order or proclamation declaring the state of disaster [or emergency] terminated." Mich. Comp. Laws § 30.403(3) & (4). The term "terminated" connotes finality. The clear purpose for imposing a 28-day limit on the Governor's exercise of her emergency powers was to ensure that the Legislature retained the ability to override the Governor's ability to rule unilaterally. The legislative history, for example, suggests that, when the Legislature adopted the 28-day limit in 2002, it did so only because "sometimes the legislature may not be in session during the time when a state of emergency or disaster needs extending," and fully recognized that more lengthy extensions of emergency power could give rise to "abuses of executive power." Mich. House Fiscal Agency Bill Analysis, H.B. 5496, 1/24/2002. **(Exhibit 16)**. Thus, the language requiring that the Legislature have the ability to terminate the state of emergency operates as a safety valve to ensure that legislative democracy does not devolve into lengthy unilateral rule by the executive.

Governor Whitmer terminated the states of disaster and emergency in EO 2020-66. Then, one minute later, she re-declared in EO 2020-68 exactly the same emergency and disaster declarations that she had just declared terminated—and which the Legislature had specifically refused to renew. Such a ruse is incompatible with the clear language of the EMA. The statute requires that she "terminate" the declaration of emergency, not that she simply sign two pieces of paper and continue the same emergency that the Legislature refused to extend. *See, e.g.,*

*Worthington v. Fauver*, 440 A.2d 1128, 1138–39 (N.J. 1982) (noting that the executive order would be invalid if it invoked the same emergency each year indefinitely).

Even Attorney General Nessel withheld comment on the Governor’s attempt to re-declare the very same emergency under the EMA that the Legislature had explicitly declined to renew. (**Exhibit 15**). Under the EMA, the Governor’s executive orders are invalid.

- 2. As a matter of statutory interpretation, the EPGA does not support Governor Whitmer’s executive orders.**
  - a. The EPGA authorizes only limited orders for time-limited emergencies.**

First, the EPGA does not authorize orders that mandate long-lasting, sweeping changes to generally applicable legislation. When interpreting statutes, Michigan courts employ the doctrine of *ejusdem generis*, which directs that, where a statute defines a category by reference to a list of illustrative terms, the general category “will ordinarily be presumed to be and construed as restricted by the particular designation and as including only things of the same kind, class, character or nature as those specifically enumerated.” *People v. Jacques*, 572 N.W.2d 195, 197 (Mich. 1998).

Here, the statute provides that the governor may proclaim a state of “emergency” under only certain circumstances: “[d]uring times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind.” Mich. Comp. Laws § 10.31(1). Unlike the EMA, the EPGA does not refer to “epidemics” as examples of circumstances over which the EPGA gives the Governor emergency powers. Instead, the illustrative examples employed by the EPGA—“crisis,” “disaster,” “rioting,” “catastrophe,” and an emergency causing “immediate danger”—generally consist of circumstances in which an urgent, time-sensitive response is required. In fact, the statute refers to each of these scenarios as comprising a “public emergency,” and the term

“emergency” as used when the EPGA was enacted in 1945 refers only to exigencies that exist for a relatively limited period of time. *See Webster’s New International Dictionary* 837 (2d ed. 1942)(defining “emergency” as “[a]n unforeseen combination of circumstances which calls for immediate action; also, less properly, exigency”). Under the doctrine of *ejusdem generis*, the statutory language persuasively indicates that the EPGA applies only to time-limited disturbances, not to months- or years-long, global pandemics.

This interpretation of the statutory language is substantiated by the EPGA’s illustrative list of the types of orders that the Governor may issue during the emergency. The EPGA contemplates that the Governor’s orders will be of primarily brief duration and circumscribed scope, affecting matters such as traffic control, controls of alcohol sales and explosives storage, and limitations on public assembly and imposition of curfews (which would necessarily be time-limited, due to the strictures of the First Amendment). Mich. Comp. Laws § 10.31(1). This illustrative list clearly contemplates that the Governor would take action in relatively time-limited circumstances.

Other clues confirm this interpretation. First, the EPGA empowers certain local officials to request an emergency declaration, suggesting that the concerns that the statute was intended to cover are primarily local in nature, rather than state-wide. Mich. Comp. Laws § 10.31(1). Second, the historical context suggests that the EPGA was enacted in 1945 in response to localized riots in Detroit in 1943. (**Exhibit 17**). Thus, both internal and external clues strongly suggest that the EPGA does not authorize the Governor to continue to rule unilaterally in the context of an ongoing, lengthy pandemic. Because an ongoing pandemic is not the sort of relatively time-limited “emergency” in which the EPGA authorizes the Governor to take unilateral action, Governor Whitmer’s declaration of an emergency under the EPGA is invalid.

**b. There is no longer any “emergency” necessary to support a declaration of emergency under the EPGA.**

The EPGA also provides that any orders issued by the Governor during the emergency “shall cease to be in effect upon declaration by the governor that the emergency no longer exists.” Mich. Comp. Laws § 10.31(2). Governor Whitmer has terminated the only emergency upon which her declaration under the EPGA rested.

The Governor rested her emergency declaration under the EPGA on precisely the same set of facts upon which her declaration of a state of disaster and a state of emergency under the EMA were based. The initial declaration of emergency, contained in EO 2020-04, declared a single “emergency” due to the COVID-19 pandemic and did not describe separate emergencies or separate facts or circumstances giving rise to independent emergencies under the EMA and the EPGA. (**Exhibit 1**). The renewed declaration of emergency, found in EO 2020-33, declared a “state of emergency and a state of disaster.” (**Exhibit 2**). The basis for these declarations was, again, the COVID-19 pandemic. The Governor did not identify any new or different emergency; there was only one “emergency” identified in all of her executive orders.

This sole “emergency” was terminated in EO 2020-66. There, the Governor stated that “[t]he health, economic, and social harms of the COVID-19 pandemic thus remain widespread and severe, and they continue to constitute a statewide emergency and disaster.” (**Exhibit 12**). The Governor added, “[T]he threat and danger posed to Michigan by the COVID-19 pandemic has by no means passed, and the disaster and emergency conditions it has created still very much exist.” (*Id.*). Nevertheless, because the Legislature declined to extend the emergency, the Governor declared that the state of emergency was terminated. (*Id.*).

Although EO 2020-66 purported to limit this termination to the state of emergency that had been declared under the EMA, that is word play. Only one emergency was ever identified

in Governor Whitmer’s executive orders: the COVID-19 pandemic. In fact, the first 11 paragraphs of EO 2020-66, EO 2020-67, and EO 2020-68—reciting the factual basis for the renewed declarations of emergency—are exactly identical in all three orders. (**Exhibits 12, 13, & 14**). Each of the executive orders specifically recognizes that the basis for the ongoing disaster declarations is exactly the same as the basis for the emergency declarations in EO 2020-04 and EO 2020-33. Because this emergency was terminated in EO 2020-66, all executive orders purporting to be based on that emergency no longer have any effect under the EPGA. Mich. Comp. Laws § 10.31(2).

EO 2020-67 does not salvage the Governor’s attempt to exercise authority under the EPGA, for at least two reasons. First, instead of declaring a new emergency based on a different set of facts, EO 2020-67 simply asserts that a state of emergency “remains declared” across Michigan due to the COVID-19 pandemic. (**Exhibit 14**). EO 2020-67 recites exactly the same facts that, moments before, EO 2020-66 recited when terminating the very same emergency. The EPGA allows the Governor to issues an emergency declaration only if there is a “great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state.” Mich. Comp. Laws § 10.31(1). The Governor cannot manufacture a new emergency merely by reiterating exactly the same facts that the Governor had just recited when terminating the emergency literally minutes before. Allowing the Governor to re-declare a new “emergency” based on entirely unchanged facts without identifying any changed circumstances or new urgency would permit the Governor to use the EPGA to support indefinite unilateral rule through serial emergency declarations. The statutory text does not permit her to do so.

Second, particularly because the Governor predicated her declaration of emergency under the EPGA on exactly the same facts that formed the basis of her declaration of emergency under the EMA, the 28-day limitation contained in the EMA applies to the Governor’s declaration

of emergency under the EPGA. Under Michigan law, “[s]tatutes that relate to the same subject or that share a common purpose are *in pari materia* and must be read together as one law, even if they contain no reference to one another and were enacted on different dates.” *Mich. Deferred Presentment Servs. Ass'n v. Comm'r of Office of Fin. & Ins. Regulation*, 788 N.W.2d 842, 846 (Mich. Ct. App. 2010). “The object of the *in pari materia* rule is to further legislative intent by finding an harmonious construction of related statutes, so that the statutes work together compatibly to realize that legislative purpose.” *People v. Stephan*, 616 N.W.2d 188, 196 (Mich. Ct. App. 2000).

The EPGA and EMA are *in pari materia*, because they both relate to the same subject and share a common purpose; namely, describing the parameters of the executive’s emergency power. This is particularly the case when a single set of facts forms the basis for emergency declarations under both statutes. In such a scenario, the statutes are controlling the executive branch’s emergency powers with respect to precisely the same state of underlying circumstances.

When the statutes are read together, the EMA provides the outer time limit on the executive’s exercise of emergency power under both the EPGA and the EMA. On its face, the EPGA does not impose a time limit on the Governor’s exercise of her emergency powers, whereas the EMA does. Unless the two statutes are harmonized, they would cause contradictory results: Under the EPGA, the Governor could exercise emergency power over precisely the same emergency circumstances with respect to which the Legislature had denied her the authority to exercise her emergency powers under the EMA. This would render the time limit in the EMA meaningless.

“To the extent that statutes that are *in pari materia* are unavoidably in conflict and cannot be reconciled, the more specific statute controls.” *Mich. Deferred Presentment Servs.*, 788 N.W.2d at 846. The EPGA generally provides that any orders issued by the Governor during the emergency “shall cease to be in effect upon declaration by the governor that the emergency no longer exists.” Mich. Comp. Laws § 10.31(2). The EMA, in turn, provides the specific mechanism under which the Governor must declare an emergency terminated. As a result, particularly where the same emergency forms the basis for declarations under both the EMA and the EPGA, then the more specific EMA controls: The emergency cannot be extended beyond 28 days, absent the Legislature’s consent, as provided in the EMA. Mich. Comp. Laws § 30.403(4).

To read the statutes as separate regimes that do not speak to each other leads to absurd results. If the EPGA allows the Governor carte blanche to declare an emergency and rule unilaterally indefinitely, then the careful balance of power reflected in the considered language of the EMA is entirely pointless, and the EMA is almost wholly irrelevant. A court “must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory.” *People v. Rea*, 902 NW2d 362, 364 (Mich. 2017). Applying the doctrine of *in pari materia* avoids the absurdity of rendering the EMA almost entirely surplusage.

**3. To the extent that the EPGA gives Governor Whitmer discretion to declare an unreviewable emergency across the entire State for an indefinite period of time, it violates the Separation of Powers and Non-Delegation Clauses.**

An interpretation of the EPGA that insulates it from the 28-day time limit in the EMA would violate Michigan’s Constitution because it is an impermissible delegation of legislative authority in violation of the Michigan Constitution. An unconstitutional interpretation of the statute must be avoided.



The Separation of Powers Clause in the Michigan Constitution provides that “[t]he powers of government are divided into three branches: legislative, executive, and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” Mich. Const. (1963) art. III, Section 2. Similarly, Article IV, Section 1 of the Michigan Constitution prohibits the delegation of “legislative power.” The essential purpose of this prohibition is to “protect the public from misuses of delegated power.” *Blue Cross and Blue Shield of Mich. v. Milliken*, 367 N.W.2d 1, 27 (Mich. 1985).

Because “[t]here is no doubt that a legislative body may not delegate to another its lawmaking powers,” a delegation of power to the executive through legislation is not lawful if it permits executive law making. *Osius v. City of St. Clair Shores*, 75 N.W.2d 25, 27 (Mich. 1956). The Legislature “must promulgate, not abdicate.” *Id.* Instead of giving the executive wide discretion to make laws, a delegation of power is valid only if it provides “reasonably precise” parameters to guide the executive’s exercise of its authority “to say when the law shall operate, or as to whom, or upon what occasion.” *Id.* These parameters ensure that “the Legislature has (1) authorized and (2) limited [the executive’s] action.” *Westervelt v. Nat. Res. Comm’n*, 263 N.W.2d 564, 576 (Mich. 1978). Only if the scope of the executive’s action is limited may the executive branch be deemed not to be “‘legislating’ in the essential sense of the word, because the [executive] is acting within specified limitations (‘standards’) established by the Legislature and is not acting in accordance with its own will.” *Id.* If no such limitations are in place and the executive branch is able to “follow its own uncircumscribed will,” then the statute consists of an improper delegation and is unconstitutional. *Id.* at 577.

“The preciseness required of the standards will depend on the complexity of the subject.” *Blue Cross*, 367 N.W.2d at 27. Nevertheless, “[o]ne of the requirements of substantive due process is the existence of reasonably precise standards to be utilized by [the executive] in the performance of delegated legislative tasks.” *State Highway Comm’n v. Vanderkloot*, 220 N.W.2d 416, 420 (Mich. 1974).

*Blue Cross* shows how this principle is applied. The statute at issue in that case established a panel of three actuaries to resolve risk-factor disputes and provided the Insurance Commissioner with the discretion to “approve” or “disapprove” risk factors proposed by health care corporations. 367 N.W.2d at 28. The statute did not provide any parameters that would guide the exercise of this discretion: it did not “detail[ ] the criteria to be employed.” *Id.* at 29. The court struck this portion of the statute as unconstitutional. *Id.* See also *Oshtemo Charter Twp. v. Kalamazoo Cty. Rd. Comm’n*, 841 N.W.2d 135, 146 (Mich. Ct. App. 2013) (suggesting that a statute that “contain[ed] neither factors for the [decisionmaker] to consider ... nor guiding standards” was likely unconstitutional).

The situation here is similar. The EPGA—as interpreted by the Governor—contains no standards guiding the Governor’s exercise of her emergency powers, much less reasonably precise ones. The EPGA allows the Governor to proclaim a state of emergency “upon his or her own volition” and to promulgate “orders, rules, and regulations as he or she considers necessary” during the state of emergency. Mich. Comp. Laws § 10.31(1). The Governor has asserted that these provisions permit her to unilaterally regulate every aspect of Michigan’s economy as well as every public interaction by every citizen across the state. The Governor has used these powers to criminalize citizens who travel to their own cottages, attorneys who drive to work, and homeowners who purchase paint. Critically, the Governor asserts that the EPGA

contains no time limit: it permits the executive to continue the state of emergency for as long as the executive deems necessary. Mich. Comp. Laws § 10.31(2). As interpreted by the Governor, the EPGA permits the Governor to assert one-person rule over the entire State for as long as she believes is necessary to confront an infectious disease that is almost certain to remain a global challenge for years to come.

The absence of any standards to guide the proper subject matter of the executive's emergency orders is troubling enough on its own, but combined with the absence of any time limit on the executive's ability to declare an emergency, it is fatal. "[A] complete lack of standards is constitutionally impermissible." *Oshtemo*, 841 N.W.2d at 145. If, as the Governor argues, the EPGA reflects an open-ended delegation that leaves the length of the emergency solely within the executive's discretion, it is an impermissible delegation. COVID-19 is expected to pose challenges to Michigan citizens for years to come. Michigan's Constitution requires that legislation proceed through the legislative process, cumbersome and compromised though that process may be. It does not permit the executive to rule the State for years to come all by herself, through emergency decree. As the Wisconsin Supreme Court held mere days ago in *Wisconsin Legislature v Palm*, \_\_\_ N.W.2d \_\_\_, 2020 WL 2465677 (Wisc. May 13, 2020), the executive's "emergency powers are premised on the inability to secure legislative approval given the nature of the emergency;" "the Governor cannot rely on emergency powers indefinitely." *Id.*

If the EPGA permits the Governor to enact sweeping rules and regulations affecting every aspect of Michigan citizens' daily lives and permits her to do so for an indefinite period of time—perhaps even for years—then it is an improper delegation of legislative power.

**4. EO 2020-17 and EO 2020-92, as applied to the Plaintiffs, are unreasonable and unnecessary.**

Finally, to the extent that the Governor contends that the EPGA limits the Governor's discretion by requiring that her orders be "reasonable" and "necessary," *see* Mich. Comp. Laws § 10.31(1), she is incorrect. Those terms are imprecise aspirations, not standards. They provide no true limiting principle that guides the judiciary's ability to evaluate the executive's decisions in the midst of an emergency.

Moreover, neither EO 2020-17 nor EO 2020-92 is reasonable or necessary as applied to the Plaintiffs. The Governor has admitted that the curve has flattened and that it is no longer necessary to prohibit non-essential medical procedures. Hospital systems are operating at such significant rates of under-capacity that they are suffering hideous financial losses, forcing layoffs that are gutting the health care system in the middle of a pandemic. Resumption of "non-essential" medical procedures poses almost no risk of transmission of COVID-19, due to the health care settings in which they are conducted. For the Governor to continue to prohibit these procedures despite the changed facts on the ground is to continue to strangle the health care system that Michigan relies on to assist it through the pandemic. It is neither reasonable nor necessary to do so.

**B. EO 2020-17 is unconstitutionally vague.**

As applied to the Plaintiffs, EO 2020-17 is also unconstitutionally vague. "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). A vague regulation violates due process because it both inappropriately chills protected conduct and invites selective enforcement. The "uncertain meaning[ ]" of the regulation causes individuals "to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked." *Baggett*

*v. Bullitt*, 377 U.S. 360, 372 (1964) (internal quotation marks and citation omitted). When a regulation imposes criminal penalties, vagueness concerns are enhanced. *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 498-99 (1982).

To satisfy due process, an executive order must (1) “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly,” and (2) “provide explicit standards for those who apply them” to prevent “arbitrary and discriminatory enforcement.” *Grayned*, 408 U.S. at 108. “A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” *Id.* at 108-109. In particular, an executive order that relies on imprecise criteria and offers no process by which to challenge designations is unlikely to survive constitutional scrutiny. *Humanitarian Law Project v. U.S. Dep’t of Treasury*, 463 F. Supp. 2d 1049, 1066-67 (C.D. Cal. 2006).

As applied to the Plaintiffs, EO 2020-17 is unconstitutionally vague. On pain of criminal penalties, the EO prohibits until after the conclusion of the state of emergency all “non-essential procedures.” (**Exhibit 4**). The EO defines “non-essential procedures” as any procedure “that is not necessary to address a medical emergency or to preserve the health and safety of a patient, as determined by a licensed medical provider.” (*Id.*). This language suggests either (1) that any licensed medical provider can determine that a procedure is “non-essential,” such that a medical provider with a differing opinion who conducts the procedure is subject to criminal penalties, or (2) that any licensed medical provider has discretion to approve any procedure as necessary to preserve the “health” of a patient. In either case, the EO’s language is hopelessly vague and subject to discriminatory application. Without more specific guidance, well-intentioned medical professionals easily could come to differing conclusions on whether a specific procedure

was necessary to preserve the health or safety of a patient. Criminal liability should not be apportioned on the basis of which medical professional happens to be the one who makes the judgment call.

EO 2020-17 also prohibits “joint replacement, bariatric surgery, and cosmetic surgery, except for emergency or trauma-related surgery where postponement would significantly impact the health, safety, and welfare of the patient.” (*Id.*). In fact, the EO provides that healthcare providers “must” not postpone such procedures if postponement would significantly impact the health, safety, and welfare of the patient. This language is not clear, either. There are no standards that guide the determinations of law enforcement officials, health care providers, or individual patients about whether particular procedures are sufficiently urgent or whether they “significantly impact” a patient’s health, safety, and welfare. These amorphous standards are fertile ground for “arbitrary and discriminatory enforcement,” and the threat of criminal penalties is certain to chill medical professionals from providing the full scope of medical care that their patients require. *Grayned*, 408 U.S. at 108.

Further complicating matters is the Governor’s May 1, 2020 assertion that Michigan no longer needs to hoard medical capacity and that “knee surgeries” should be resumed—even though EO 2020-17 criminalizes the provision of those surgeries. Dr. Khaldun’s May 3, 2020 letter only adds to the confusion. (**Exhibit 5**). It is not clear what—if any—interpretive authority Dr. Khaldun possesses with respect to EO 2020-17. In any event, Dr. Khaldun’s letter injects several new standards into the mix, suggesting that medical providers should also assess whether patients will experience “a significant decline in health” if their procedures are delayed. Further, according to Dr. Khaldun, EO 2020-17 was specifically written with “flexible” language that gives medical providers “broad discretion” about which procedures

can be conducted. (*Id.*). That assessment suggests that the language of the EO is vague enough to allow health care providers to perform whichever procedures that they think are necessary. The concern with the lack of clarity is only heightened by the fact that a violation of EO 2020-17 incurs criminal penalties.

Because it contains no reasonably identifiable standards under which the Plaintiffs can determine whether their activities are criminal and which ensure that enforcement is neither arbitrary nor discriminatory, EO 2020-17 is unconstitutionally vague as applied to the Plaintiffs.

**C. EO 2020-17 violates the Plaintiffs’ procedural due process rights.**

“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Nevertheless, the Supreme Court “consistently has held that some form of hearing is required before an individual is finally deprived of a property interest.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.*

In emergency situations, post-deprivation process—rather than pre-deprivation process—may satisfy due process. *Gilbert v. Homar*, 520 U.S. 924, 930 (1997). Nevertheless, “the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner.” *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (quotation marks and citation omitted). “Such notice must be reasonably calculated, under the circumstances, to apprise the interested parties of the pendency of an action and afford them an opportunity to present their objections.” *Morrison v. Wallen*, 375 F.3d 468, 475 (6th Cir. 2004).

To the extent that EO 2020-17 eliminated the Provider Plaintiffs' ability to engage in any business operations, it has deprived them of a property interest. *Bd of Regents of State Colleges v. Roth*, 408 U.S. 564, 576-77 (1972) (noting that property interests must be broadly interpreted). It is also undisputed that EO 2020-17 does not provide the Plaintiffs any ability to challenge the determination that their activities are non-essential (and thereby their ability to continue operations).

The Supreme Court of Pennsylvania recently ruled that an executive order shutting down businesses in response to COVID-19 must provide some degree of post-deprivation due process to companies who were ordered to shutter their operations. *See Friends of DeVito v. Wolf*, \_\_\_ A.3d \_\_\_, 2020 WL 1847100, at \*19-21 (Pa. Apr. 13, 2020). The Court rejected the Governor's assertion that the plaintiffs "were not entitled to any procedural due process, either before or after the entry of the Executive Order," reminding instead that, "[t]he imperative necessity for safeguarding these rights to procedural due process under the gravest of emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that there is the greatest temptation to dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental action." *Id.* at \*19-20 (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 164-65 (1963)). Ultimately, the Pennsylvania court upheld the Pennsylvania executive order because the executive order contained a process whereby businesses had a formal "opportunity to challenge the Governor's placement of their business on the non-life-sustaining list." *Id.* at \*20. That is because this process gave businesses the opportunity "to correct mis-categorizations of certain businesses." *Id.* at \*21.

EO 2020-17, by contrast, provides no process through which to challenge the procedures provided by the Provider Plaintiffs and sought by Mr. Gulick as "non-essential." Nor



does it outline any criteria that provide a reasonable guide for such a determination. EO 2020-17, as applied and executed, not only fails to clearly define “non-essential” procedures in a way that allows the Plaintiffs to definitely determine whether their intended activities will subject them to criminal sanction but also fails to provide them with any opportunity to demonstrate that their activities are truly essential. EO 2020-17 therefore violates procedural due process.

**D. As applied to the Plaintiffs, EO 2020-17 and EO 2020-92 violate substantive due process.**

The executive orders violate substantive due process in at least two ways. First, “[f]reedom of movement”—otherwise known as the “right to travel”—“is a part of the ‘liberty’ of which the citizen cannot be deprived without the due process of law under the Fifth Amendment.” *Kent v. Dulles*, 357 U.S. 116, 125–26 (1958). The right to travel includes the right to intrastate travel. *Johnson v. City of Cincinnati*, 310 F.3d 484, 498 (6th Cir. 2002). Second, due process also protects “against arbitrary intrusion by the government of one’s right to practice a chosen profession.” *Fleming v. U.S. Dep’t of Agric.*, 713 F.2d 179, 183 (6th Cir. 1983).

EO 2020-92 specifically prohibits the Plaintiffs’ right to travel, including Mr. Gulick’s right to travel in order to obtain necessary medical care. (**Exhibit 18**). Enactments that directly curtail the right to travel are subject to strict scrutiny. *Cole v. City of Memphis*, 839 F.3d 530, 537 (6th Cir. 2016). *See also Kent*, 357 U.S. at 129 (“Where activities or enjoyment, natural and often necessary to the well-being of an American citizen, such as travel, are involved, we will construe narrowly all delegated powers that curtail or dilute them.”). To satisfy strict scrutiny, the government must prove that the infringement on the right to travel “is narrowly tailored to serve a compelling state interest.” *Johnson*, 310 F.3d at 502.

The government has made no such attempt here. There has been no demonstration of why the government must prohibit almost all of the Plaintiffs’ intrastate travel—including travel

that does not require in-person contact or interaction—in order to meet its interests in preventing community transmission of COVID-19. Ordinarily, quarantine orders must be justified by an individualized threat assessment. *See, e.g., Reynolds v. McNichols*, 488 F.2d 1378, 1382 (10th Cir. 1973); *Hickox v. Christie*, 205 F. Supp. 3d 579, 592 (D.N.J. 2016). The State cannot justify an interminable mass quarantine without ever conducting any type of individuated analysis. *See Jew Ho v. Williamson*, 103 F. 10, 20 (C.C.N.D. Cal. 1900). There is no evidence in this case that any of the Plaintiffs is a particular threat vector for COVID-19.

EO 2020-17, in turn, prohibits almost all of the Provider Plaintiffs’ healthcare operations, as well as Mr. Gulick’s knee replacement surgery. The Governor’s stated reason for prohibiting all non-essential medical procedures was to ensure that hospital resources had capacity to cope with an expected surge of COVID-19 patients. But, as the Governor has admitted, that danger no longer exists. In fact, the urgency runs all in the opposite direction. Hospital systems are currently operating significantly below capacity and are sustaining enormous financial losses due to the diminished number of patients.

The Governor has actively encouraged the resumption of knee surgeries, observing that healthcare capacity is no longer an urgent issue. But at the same time, the Governor has failed to rescind EO 2020-17, which makes it a crime to provide the very same knee surgeries that the Governor has encouraged medical providers to resume. Under these circumstances, EO 2020-17 is arbitrary and inconsistent with due process.

**E. As applied to the Plaintiffs, EO 2020-17 and EO 2020-92 violate the Dormant Commerce Clause.**

Because the Commerce Clause reserves to Congress the power to regulate interstate and foreign commerce, individual states may not unduly regulate commerce. Where State action has an incidental effect on interstate commerce, the relevant test is whether “the burden imposed

on [interstate] commerce is clearly excessive in relation to the putative local benefits.” *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). In determining whether a burden is excessive, the court should analyze both the local interest involved, as well as whether that interest “could be promoted as well with a lesser impact on interstate activities.” *Id.* “Interstate commerce” includes commercial activities—like the provision of medical care—that are otherwise local in nature. *See Wickard v. Filburn*, 317 U.S. 111 (1942). Thus, the question under *Pike* is whether Michigan’s interest in stopping the spread of COVID-19 could be promoted with a lesser impact on commercial activities generally.

It is undisputed that the burden in this case is significant. Grand Health and the Clinics have been prohibited for months from treating almost 90% of their patients, many of whom are low-income, high-risk, and in pain or otherwise at serious risk that their health could deteriorate due to their lack of access to care.

To justify the enormous burden that the executive orders impose upon the Plaintiffs, the government must show that its “claimed local benefits” are not illusory. *See Town of Southold v. Town of East Hampton*, 477 F.3d 38, 52 (2d Cir. 2007) (reversing the district court when it had failed to “engage in any meaningful examination of the claimed local benefits” of a law). The government cannot do so here. Michigan’s stated public-health goals are not advanced by prohibiting Grand Health’s and the Clinics’ operations because hospitals have been operating below capacity for months, and relevant modeling projects that COVID-19 cases are on a downward trend. Further, Grand Health and the Clinics can conduct their operations in a manner that complies with the Governor’s stated goals of eliminating unsafe person-to-person contact. As applied to the Plaintiffs, the Executive Orders are therefore an undue burden upon interstate commerce in violation of the Commerce Clause.

## **II. The remaining factors favor preliminary injunctive relief.**

### **A. The Plaintiffs will suffer irreparable harm.**

The Plaintiffs will suffer immeasurable and irreparable harm if the executive orders are enforced against them. Irreparable harm is “the kind of injury for which monetary damages are difficult to calculate.” *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 550 (6th Cir. 2007). Irreparable harm exists where a plaintiff’s business is threatened with insolvency or its financial viability is threatened. *See Performance Unlimited, Inc. v. Questar Publishers Inc.*, 52 F.3d 1373, 1382 (6th Cir. 1995). Entity-destroying losses differ from mere damages and constitute irreparable harm. *See, e.g., Roso-Lino Beverage Distributors, Inc. v. Coca-Cola Bottling Co. of New York, Inc.*, 749 F.2d 124, 125 (2d Cir. 1984).

The Provider Plaintiffs will suffer irreparable injury from loss of customers, goodwill, and future business. The Sixth Circuit has held that a moving party will suffer irreparable harm if it loses customers, goodwill, or future business. *See Mich. Bell Telephone Co. v. Engler*, 257 F.3d 587, 599 (6<sup>th</sup> Cir. 2001); *Basicomputer Corp. v. Scott*, 973 F.2d 507, 512 (6th Cir. Cir. 1992). Mr. Gulick will suffer irreparable harm in the form of the deprivation of his constitutional rights. *See Maryville Baptist Church, Inc. v. Beshear*, \_\_\_ F.3d \_\_\_, 2020 WL 2111316, at \*4 (6th Cir. May 2, 2020); *Overstreet v. Lexington-Fayette Urban Cty. Gov’t*, 305 F.3d 566, 578 (6th Cir. 2002).

### **B. The public interest and the balance of equities favor preliminary injunctive relief.**

The remaining factors also weigh in favor of a preliminary injunction. First, the balance of harms favors the Plaintiffs. Grand Health and the Clinics have been unable to treat many of their patients for almost two months, causing massive disruptions to their patients’ health and wellbeing. Many patients whose conditions are not deemed “urgent” or “emergent” are

nevertheless in desperate need of imminent medical care so that their conditions do not spiral dangerously out of control.

As Governor Whitmer has admitted, elective medical procedures no longer need to be prohibited in order to preserve healthcare capacity for COVID-19 patients. Hospitals and other medical facilities in Michigan are at record low capacities, have lost millions of dollars in revenue over the last several weeks, and have been forced to lay off thousands of nurses and other medical personnel due to the lack of patients served by their facilities. These layoffs and enormous financial losses are impacting the healthcare industry's ability to effectively respond to the pandemic itself. Permitting elective medical procedures to resume does not pose a significant risk of exacerbating the transmission of COVID-19, because the healthcare industry is well-qualified to take steps to ensure sanitation and appropriate protocol with respect to patient interaction. Grand Health and the Clinics have described in detail how they will do so.

These concerns dovetail with the general public interest. "[I]t is always in the public interest to prevent violation of a party's constitutional rights." *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994). The wider public interest also favors a limited injunction in this case, due to the significant public health benefits of the work performed by Grand Health and the Clinics. Thus, the remaining factors also dictate that an injunction is appropriate in this case.

### **CONCLUSION**

A preliminary injunction should be entered, enjoining the Defendants from applying EO 2020-17, EO 2020-92, and the HHS order to preclude the Plaintiffs' activities.

MILLER JOHNSON  
Attorneys for Plaintiff

Dated: May 18, 2020

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**Certificate of Compliance**

1. This brief complies with the type-volume limitation of W.D. Mich. LCivR 7.3(b)(i) because this brief contains 10,593 words, excluding the parts of the brief exempted by W.D. Mich. LCivR 7.3(b)(i).

2. This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 for Windows in 12-point Century Schoolbook font.

Dated: May 18, 2020

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# **EXHIBIT 1**





GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

## EXECUTIVE ORDER

No. 2020-4

### Declaration of State of Emergency

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 that had not been previously identified in humans and can easily spread from person to person.

COVID-19 has been identified as the cause of an outbreak of respiratory illness first detected in Wuhan City in the Hubei Province of China. Person-to-person spread of the virus has occurred in the United States, with some of those occurring in people with no travel history and no known source of exposure. On January 31, 2020, the United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency for COVID-19, and affected state and local governments have also declared states of emergency.

The State of Michigan has been taking proactive steps to prevent and prepare for the spread of this disease. On February 3, 2020, the Michigan Department of Health and Human Services (MDHHS) activated the Community Health Emergency Coordination Center, and has been working diligently with local health departments, health systems, and medical providers throughout Michigan to make sure appropriate screening and preparations for COVID-19 are being made. On February 28, 2020, I activated the State Emergency Operations Center to maximize coordination with state, local and federal agencies, as well as private partners, and to help prevent the spread of the disease. On March 3, 2020, I created four task forces comprising key state government agencies to coordinate the state's response and work closely with the appropriate community and non-governmental stakeholders to combat the spread of COVID-19 and assess the impact it may have on Michiganders' day-to-day lives. And throughout this time, the State has been working with schools, businesses, medical providers, local health departments, and residents to make sure they have the information they need to prepare for potential cases.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

SENATE ENROLLING  
MAR 11 '20 AM 9:36

The Emergency Management Act, 1976 PA 390, as amended, MCL 30.403(4), provides that “[t]he governor shall, by executive order or proclamation, declare a state of emergency if he or she finds that an emergency has occurred or that the threat of an emergency exists.”

The Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31(1), provides that “[d]uring times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, . . . the governor may proclaim a state of emergency and designate the area involved.”

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. A state of emergency is declared across the State of Michigan.
2. The Emergency Management and Homeland Security Division of the Department of State Police must coordinate and maximize all state efforts that may be activated to state service to assist local governments and officials and may call upon all state departments to utilize available resources to assist.
3. The state of emergency is terminated when emergency conditions no longer exist and appropriate programs have been implemented to recover from any effects of the emergency conditions, consistent with the legal authorities upon which this declaration is based and any limits on duration imposed by those authorities.

Given under my hand and the Great Seal of the State of Michigan.

Date: March 10, 2020

  
GRETCHEN WHITMER  
GOVERNOR



By the Governor:

  
Jocelyn Benson  
SECRETARY OF STATE

FILED WITH SECRETARY OF STATE

ON 3/10/2020 AT 11:30pm

# **EXHIBIT 2**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

SECRETARY OF SENATE  
2020 APR 1 PM 4:59

## EXECUTIVE ORDER

No. 2020-33

### Expanded emergency and disaster declaration

On March 10, 2020, I issued Executive Order 2020-4, which declared a state of emergency in Michigan to address the COVID-19 pandemic. This new disease, caused by a novel coronavirus not previously identified in humans, can easily spread from person to person and can result in serious illness or death. There is currently no approved vaccine or antiviral treatment.

Scarcely three weeks later, the virus has spread across Michigan. To date, the state has 9,334 confirmed cases of COVID-19 and 337 people have died of the disease. Many thousands more are infected but have not been tested. Hospitals in Oakland, Macomb, Wayne, and Washtenaw counties are reporting that they are full or nearly full to capacity. Ventilators and personal protective equipment are in short supply and high demand. Michigan needs more medical personnel than are currently available to care for COVID-19 patients. Dormitories and a convention center are being converted to temporary field hospitals.

The best way to slow the spread of COVID-19 is for people to stay home and keep their distance from others. To that end, and pursuant to the recommendations of public health experts, I have restricted access to places of public accommodation and school buildings in Executive Orders 2020-20 and 2020-11, respectively. And in Executive Order 2020-21, I have limited gatherings and travel, and have required all workers who are not necessary to sustain or protect life to remain at home.

Social distancing, though necessary to combat COVID-19, has harsh economic consequences. Almost overnight, businesses and government agencies have had to dramatically adjust how they work. Where working from home is not possible, businesses have closed or significantly restricted their normal operations. Michiganders are losing their jobs in record numbers: over the past two weeks alone, nearly a half-million of them submitted claims for unemployment insurance. That is more claims than were filed in the entirety of the prior calendar year.

The economic damage—already severe—will compound with time. On March 19, 2020, economists at the University of Michigan forecasted that as many as 1 in 10 Michiganders could be unemployed by the fall and that economic sectors that feature substantial social interaction could contract by as much as 50%. As a result, many families in Michigan will struggle to pay their bills or even put food on the table.

My administration has already taken aggressive measures to mitigate the economic harms of this pandemic. In Executive Order 2020-18, we placed strict rules on businesses to prevent price gouging. In Executive Order 2020-19, we put a temporary hold on evictions for families that cannot make their rent. And in Executive Order 2020-24, we expanded eligibility for unemployment benefits.

Nonetheless, the COVID-19 pandemic has disrupted and will continue to disrupt our economy, our homes, and our educational, civic, social, and religious institutions. School closures have made it harder to educate our children and have increased strain on parents, many of whom continue to work from home. The closure of museums and theaters will limit people's ability to enrich themselves through the arts. And curtailing gatherings has left many seeking new ways to connect with their community during these challenging times.

The health, economic, and social harms of the COVID-19 pandemic are widespread and severe, and they demand we do more.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

The Emergency Management Act, 1976 PA 390, as amended, MCL 30.403(3)-(4), provides that "[t]he governor shall, by executive order or proclamation, declare a state of emergency" and/or a "state of disaster" upon finding that an emergency and/or disaster has occurred or is threatening to occur.

The Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31(1), provides that "[d]uring times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state . . . the governor may proclaim a state of emergency and designate the area involved."

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. A state of emergency and a state of disaster are both declared across the State of Michigan.
2. The Emergency Management and Homeland Security Division of the Department of State Police must coordinate and maximize all state efforts that may be activated to state service to assist local governments and officials and may call upon all state departments to utilize available resources to assist.
3. The state of emergency and the state of disaster will terminate when emergency and disaster conditions no longer exist and appropriate programs have been implemented to recover from any effects of the statewide emergency and disaster,

consistent with the legal authorities upon which this declaration is based and any limits imposed by those authorities, including section 3 of the Emergency Management Act, 1976 PA 390, as amended, MCL 30.403.

4. Executive Order 2020-4 is rescinded and replaced. All previous orders that rested on Executive Order 2020-4 now rest on this order.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 1, 2020

Time: 3:30 pm



---

GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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SECRETARY OF STATE

# **EXHIBIT 3**

**Exhibit 3****Governor Whitmer's Executive Orders Since March 10, 2020<sup>1</sup>**

Executive Order	Provisions
Executive Order 2020-04—Declaration of State of Emergency	<ul style="list-style-type: none"> <li>• Declares a state of emergency “across the state of Michigan.”</li> </ul>
Executive Order 2020-05—Temporary prohibition on large assemblies and school closures (Rescinded)	<ul style="list-style-type: none"> <li>• Prohibits all assemblages of 250 people or more, excluding industrial work, mass transit, and the purchase of groceries.</li> <li>• Orders the closure of all secondary and elementary schools.</li> </ul>
Executive Order 2020-06—Temporary restrictions on entry into health care and juvenile justice facilities (Rescinded)	<ul style="list-style-type: none"> <li>• Prohibits visitors from entering healthcare and juvenile justice facilities who are not necessary for the provision of medical care.</li> <li>• Orders that “facilities must perform a health evaluation of all individuals that are not under the care of the facility each time the individual seeks to enter the facility, and must deny entry to those individuals who do not meet the evaluation criteria.”</li> </ul>
Executive Order 2020-07—Temporary restrictions on entry into healthcare and juvenile justice facilities (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-06.</li> <li>• Orders that healthcare and juvenile justice facilities prohibit any visitors that: “are not necessary for the provision of medical care, the support of activities of daily living, or the exercise of power of attorney or court-appointed guardianship for an individual under the facility’s care; are not a parent, foster parent, or guardian of an individual who is 21 years of age or under and who is under the facility’s care; are not visiting an individual under the facility’s care that is in serious or critical condition or in hospice care; and are not visiting under exigent circumstances or for the purpose of performing official governmental functions.”</li> </ul>
Executive Order 2020-08—Enhanced restrictions on price gouging (Rescinded)	<ul style="list-style-type: none"> <li>• Prohibits purchasing products from retailer and reselling the products for excessive prices.</li> <li>• Orders that a person must not offer for sale or sell any product in this state at a price that is more than 20% higher than what the person offered or charged for that product as of March 9, 2020, unless the person can demonstrate that the</li> </ul>

<sup>1</sup> This chart was last updated as of 9 a.m. Eastern Time on May 18, 2020.



**Exhibit 3**

	price increase was attributable to an increase in the cost of bringing the product to market.
Executive Order 2020-09—Temporary restriction on uses of places of public accommodation (Rescinded)	<ul style="list-style-type: none"> <li>• Declares it was reasonable and necessary to restrict the people of Michigan from places of public accommodation.</li> <li>• Orders the closure of bars, restaurants, coffeehouses, and other places of public accommodation offering food or beverage for on-site consumption.</li> <li>• Orders the closure of theaters, gyms, casinos, and other places of amusement and recreation.</li> </ul>
Executive Order 2020-10—Temporary expansions in unemployment eligibility and cost sharing (Rescinded)	<ul style="list-style-type: none"> <li>• Suspends “strict compliance with subdivision (a) of subsection (1) of section 29 of the Michigan Employment Security Act, 1936 PA 1, as amended (“Employment Security Act”), MCL 421.29(1)(a),” subject to certain conditions.</li> <li>• Suspends “strict compliance with subsection (3) of section 48 of the Employment Security Act, MCL 421.48(3),” subject to certain conditions.</li> <li>• Suspends “strict compliance with subsections (4) through (7) of Rule 421.210 is Suspends,” subject to certain conditions.</li> <li>• Orders that “strict compliance with subdivision (7) of subsection (c) of section 27 of the Employment Security Act, MCL 429.27(c)(7),” subject to certain conditions.</li> <li>• Orders that “strict compliance with subdivision (b) of subsection (1) of section 28c of the Employment Security Act, MCL 429.28c(1)(b),” subject to certain conditions.</li> <li>• Orders that “an employer or employing unit must not be charged for unemployment benefits if their employees become unemployed because of an executive order requiring them to close or limit operations.”</li> </ul>
Executive Order 2020-11—temporary prohibition on large assemblies and events (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-05.</li> <li>• Prohibits all assemblages of 50 people or more, excluding healthcare facilities, workplaces not open to the public, mass transit, the purchase of groceries, and agricultural or construction work.</li> <li>• Orders all elementary school buildings and secondary school buildings in the state to close to students for educational purposes through April 5, 2020.</li> </ul>

**Exhibit 3**

Executive Order 2020-12—Enhanced support for deliveries (Rescinded)	<ul style="list-style-type: none"> <li>• Suspends all state and local seasonal load restrictions for deliveries that meet immediate needs for certain medical and sanitation supplies, food for emergency store restocking, and other COVID-19 necessities.</li> <li>• Orders all state and local road agencies to exercise their authority on an expedited basis to issue permits that allow non-seasonal load restrictions to be exceeded.</li> <li>• Suspends all state and local restrictions on the noise and timing of loading and deliveries for loading and deliveries that meet immediate needs for certain medical and sanitation supplies, food for emergency store restocking, and other COVID-19 necessities.</li> </ul>
Executive Order 2020-13—Temporary enhancements to operational capacity and efficiency of health care facilities (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that “the Department of Health and Human Services (“DHHS”) may issue an emergency certificate of need to an applicant and defer strict compliance with the procedural requirements of section 22235 of the Public Health Code.”</li> <li>• Orders that “the Department of Licensing and Regulatory Affairs (“LARA”) may grant a waiver under section 21564 of the Public Health Code, 1978 PA 368, as amended, MCL 333.21564, to any licensed hospital in this state.”</li> <li>• Orders that “LARA may issue a temporary registration as a certified nurse aide to an applicant, regardless of whether the applicant demonstrates to LARA that they have successfully completed the examination requirements of sections 21911 and 21913 of the Public Health Code.”</li> <li>• Orders that “LARA may renew a license to practice under Part 170, 172, 175, 177, or 187 of the Public Health Code, 1978 PA 368, as amended, regardless of whether the licensee has satisfied the continuing education requirement applicable to their license.”</li> <li>• Orders that “LARA may recognize hours worked responding to the COVID-19 emergency as hours toward continuing education courses or programs required for licensure.”</li> <li>• Orders that “LARA may allow a non-nursing assistant such as an activity coordinator, social worker, or volunteer to help feed or transport a patient or resident in a manner consistent with the patient’s or resident’s care plan.”</li> </ul>

**Exhibit 3**

Executive Order 2020-14—Temporary extension of deadline to redeem property for nonpayment of delinquent property taxes	<ul style="list-style-type: none"> <li>Suspends “strict compliance with subsection (3) of section 78g of the General Property Tax Act (“GPTA”), 1893 PA 206, as amended, MCL 211.78g(3),” and extends “the deadline by which property forfeited to a county treasurer must be redeemed ... from March 31, 2020 until the later of (a) May 29, 2020, or (b) 30 days after the termination of the state of emergency under section 3 of Executive Order 2020-4.”</li> </ul>
Executive Order 2020-15—Authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards (Rescinded)	<ul style="list-style-type: none"> <li>Orders that “to the extent that the Open Meetings Act, 1976 PA 267, as amended, MCL 15.261 to 15.272 (“OMA”) requires that a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body, strict compliance with section 3 of the OMA, MCL 15.263, is temporarily suspended in order to alleviate any such physical-place or physical-presence requirements,” subject to certain conditions.</li> <li>Orders that “strict compliance with subsection 6 of section 11a, subsection 7 of section 384, and subsection 1 of section 418a of the Revised School Code, 1976 PA 451, as amended, MCL 380.11a(6), MCL 380.384(7), and MCL 380.418a(1), is temporarily suspended” subject to certain conditions.</li> </ul>
Executive Order 2020-16—Expanding child care during COVID-19 (Rescinded)	<ul style="list-style-type: none"> <li>Suspends “strict compliance with section 7a of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.117a” and allows provisional licenses to be issued in spite of “deficiencies present in the child care organization,” subject to certain conditions.</li> <li>Suspends “strict compliance with subsection (2) of section 5m of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.115m(2)” and allows the establishment of certain child care centers “without a license from LARA,” subject to certain conditions.</li> </ul>
Executive Order 2020-17—Temporary restrictions on non-essential medical and dental procedures	<ul style="list-style-type: none"> <li>Orders that “all hospitals, freestanding surgical outpatient facilities, and dental facilities, and all state-operated outpatient facilities ... must implement a plan to temporarily postpone, until the termination of the state of emergency under section 3 of Executive Order 2020-4, all non-essential procedures.”</li> </ul>
Executive Order 2020-18—Restrictions on price gouging (Rescinded)	<ul style="list-style-type: none"> <li>Rescinds EO 2020-08.</li> <li>Imposes substantially similar restrictions as EO 20-08 with minor amendments.</li> </ul>

**Exhibit 3**

Executive Order 2020-19—Temporary prohibition against entry to premises for the purpose of removing or excluding a tenant or mobile home owner from their home (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that “no person shall remove or exclude from leased residential premises or residential premises held under a forfeited executory contract a tenant, a vendee of a forfeited executory contract, or a person holding under a tenant or vendee, except when the tenant, vendee, or person holding under them poses a substantial risk to another person or an imminent and severe risk to property.”</li> <li>• Orders that “no person may enter residential property in order to remove or exclude from the premises a tenant, a vendee of a forfeited executory contract, a person holding under a tenant or vendee, or the personal property of a tenant, vendee, or person holding under them, including pursuant to a writ authorizing restoration of a plaintiff to full, peaceful possession of premises under section 5744 of the RJA, MCL 600.5744, except when the tenant, vendee, or person holding under them poses a substantial risk to another person or an imminent and severe risk to property.”</li> <li>• Orders that “a sheriff, under-sheriff or constable, deputy, or other officer must not serve process requiring forfeiture of leased residential premises or residential premises held under a forfeited executory contract.”</li> <li>• Orders that “no person may deny a mobile home owner access to their mobile home, except when the mobile home owner’s tenancy has been terminated because the mobile home owner poses a substantial risk to another person or an imminent and severe risk to property.”</li> </ul>
Executive Order 2020-20—Temporary restrictions on the use of places of public accommodation (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-09.</li> <li>• Reinstates and modifies the restrictions in EO 2020-09 “by clarifying their application to facilities offering non-essential personal care services.”</li> </ul>
Executive Order 2020-21—Temporary requirement to suspend activities not necessary to sustain and protect life (Rescinded)	<ul style="list-style-type: none"> <li>• Declares that is “reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible”</li> <li>• Orders that “[n]o person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations” subject to certain conditions and exceptions.</li> </ul>
Executive Order 2020-22—Extension of county canvass deadlines for the March 10, 2020 Presidential Primary Election	<ul style="list-style-type: none"> <li>• Suspends strict compliance with rules and procedures under section 822(1) of the Michigan Election Law, 1954 PA 116, as amended, MCL 168.822(1) &amp; (2) and 842(1) of the Michigan Election Law, MCL 168.842(1) and extends the</li> </ul>

**Exhibit 3**

	deadlines for a board of county canvassers to complete the canvass of the election held on March 10, 2020.
Executive Order 2020-23—Enhanced authorization of remote means for carrying out state administrative procedures (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that “[h]earing officers or arbitrators may conduct Michigan Employment Relations Commission ... hearings by electronic means, including video conferencing.”</li> <li>• Suspends “strict compliance with the procedural requirements of 1939 PA 176, as amended, MCL 423.1 et seq. (employment relations commission), 1947 PA 336, as amended, MCL 423.201 et seq. (public employment relations), and 1969 PA 312, as amended, MCL 423.231 et seq. (compulsory arbitration of labor disputes in police and fire departments),” subject to certain conditions.</li> <li>• Orders that the “Unemployment Insurance Agency may permit hearings to be held by telephone or electronic means, including video conferencing.”</li> <li>• Orders that documents, notice, and service of process for several agencies may be filed electronically.</li> <li>• Orders that state agencies may accept and rely upon electronic signatures.</li> </ul>
Executive Order 2020-24—Temporary expansions in unemployment eligibility and cost-sharing (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-10.</li> <li>• Reaffirms the measures in EO 2020-10 and clarifies and strengthens the expansion of eligibility for unemployment benefits and cost-sharing with employers.</li> </ul>
Executive Order 2020-25—Temporary enhancements to operational capacity, flexibility, and efficiency of pharmacies (Rescinded)	<ul style="list-style-type: none"> <li>• Declares that the public requires increased access to therapeutic pharmaceuticals. Meeting this critical need requires swiftly but safely expanding access to pharmacy services.</li> <li>• Orders that pharmacists “may dispense emergency refills of up to a sixty (60) day supply of any non-controlled maintenance medication for residents of any county in this state if, in the pharmacist’s professional judgment, failure to refill the prescription might interrupt the patient’s ongoing care and have a significant adverse effect on the patient’s well-being” subject to certain conditions</li> <li>• Reduces licensing and supervisory requirements for pharmacists.</li> <li>• Suspends strict compliance with any statute, rule, or regulation that interferes with the order.</li> </ul>

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Executive Order 2020-26—Extension of April 2020 Michigan income tax filing deadlines	<ul style="list-style-type: none"> <li>• Orders that strict compliance with rules and procedures of the Income Tax Act of 1967 and the City Income Tax Act of 1964 as they relate to the filing of tax returns by certain deadlines is suspended and the deadlines for filing tax returns are extended.</li> </ul>
Executive Order 2020-27—Conducting elections on May 5, 2020 using absent voter ballots	<ul style="list-style-type: none"> <li>• Suspends strict compliance with the rules and procedures under chapters 28 and 39 of the Michigan Election Law, 1954 PA 116, and further orders that elections “must be conducted to the greatest extent possible by absent voter ballots issued and submitted without in-person interaction,” subject to certain conditions.</li> </ul>
Executive Order 2020-28—Restoring water service to occupied residences during the COVID-19 pandemic	<ul style="list-style-type: none"> <li>• Declares that it is “reasonable and necessary to require public water supplies to report on the status of water service within their respective service areas.”</li> <li>• Orders that “public water supply must restore water service to any occupied residence where water service has been shut off due to non-payment, so long as the public water supply does not have reason to believe that reconnection would create a risk to public health.”</li> </ul>
Executive Order 2020-29—Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols and enhanced early-release authorization for county jails, local lockups, and juvenile detention centers (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that “the Michigan Department of Corrections (the “Department”) must continue to implement risk reduction protocols to address COVID-19 (“risk reduction protocols”), which the Department has already developed and implemented at the facilities it operates.”</li> <li>• Orders that “strict compliance with the capacity and procedural requirements regarding county jail overcrowding states of emergency in the County Jail Overcrowding Act (“CJOA”), 1982 PA 325, MCL 801.51 et seq., is temporarily suspended. While this order is in effect, all actions that would be authorized under the CJOA in the event of a declaration of a county jail overcrowding state of emergency are authorized.”</li> </ul>
Executive Order 2020-30—Temporary relief from certain restrictions and requirements governing the provision of medical services (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that “any and all provisions in Article 15 of the Public Health Code, 1978 PA 368, as amended, MCL 333.16101 et seq., relating to scope of practice, supervision, and delegation, are temporarily suspended” for the purpose of ensuring medical personnel, medical students, and volunteers can provide critical care in response to the increased demand for medical services related to COVID-19.</li> <li>• Orders that “[n]otwithstanding any law, regulation, or executive order to the contrary, any drug manufacturer or wholesale distributor of prescription drugs licensed in another state whose license is in good standing is temporarily</li> </ul>

**Exhibit 3**

	authorized to distribute and ship controlled substances into Michigan to a hospital or to a licensed manufacturer or wholesale distributor under MCL 333.17748.”
Executive Order 2020-31—Temporary relief from standard vapor pressure restrictions on gasoline sales	<ul style="list-style-type: none"> <li>• Declares that it is necessary to “temporarily exten[d] the period of time during which the winter-blend gasoline can be sold [to] enable distributors to safely shift to a lower volatility gasoline supply with as little in-person work and travel as possible, while also ensuring that this state maintains a reliable supply of gasoline adequate to meet its critical needs during this emergency.”</li> <li>• Orders that “Rule 4(g) of Regulation No. 564, promulgated by the Laboratory Division of the Department of Agriculture and Rural Development, 1987 AACRS, as amended, R 285.564.4(g) of the Michigan Administrative Code, is temporarily suspended,” subject to certain conditions.</li> </ul>
Executive Order 2020-32—Temporary restrictions on non-essential veterinary services (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that “while the declared emergency is in effect, all veterinary facilities must implement a plan to temporarily postpone all in-person non-essential veterinary services until the declared emergency has ended.”</li> <li>• Orders that “all veterinary services, essential and non-essential, must be performed by telemedicine to the fullest extent possible while the declared emergency is in effect. If a non-essential service cannot be performed by telemedicine, a plan must require that it be postponed. If an essential service cannot be performed by telemedicine, a plan need not postpone it and may allow it to be performed in person.”</li> </ul>
Executive Order 2020-33—Expanded emergency and disaster declaration (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that a “state of emergency and a state of disaster are both declared across the state of Michigan.”</li> <li>• Orders that EO 2020-04 is replaced by EO 2020-33, and all previous Executive Orders relying on EO 2020-4 will now rely on EO 2020-33.</li> </ul>
Executive Order 2020-34—Temporary restrictions on veterinary services	<ul style="list-style-type: none"> <li>• Replaces EO 2020-32</li> <li>• Adjusts and clarifies the scope of EO 2020-32.</li> </ul>
Executive Order 2020-35—Provision of K-12 education during the remainder of the 2019-2020 school year (Rescinded)	<ul style="list-style-type: none"> <li>• Orders the suspension of in-person K-12 instruction for the remainder of the 2019-2020 school year.</li> <li>• Orders Department of Education to adopt Continuity of Learning and COVID-19 Response Plans.</li> </ul>



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	<ul style="list-style-type: none"> <li>• Orders that “strict compliance with rules and procedures” under sections of the State School Aid Act, MCL 388.1701 et seq., and the Michigan School Code are temporarily suspended subject to certain conditions.</li> </ul>
Executive Order 2020-36—Protecting workers who stay home, stay safe when they or their close contacts are sick	<ul style="list-style-type: none"> <li>• Declares that “it is the public policy of this state that an employer shall not discharge, discipline, or otherwise retaliate against an employee for staying home when he or she is at particular risk of infecting others with COVID-19.”</li> <li>• Issues numerous rules governing the behavior of employers and employees, ostensibly to effectuate the purpose of EO 2020-36.</li> </ul>
Executive Order 2020-37—Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-07.</li> <li>• Clarifies the restrictions in EO 2020-07 and extends their duration.</li> </ul>
Executive Order 2020-38—Temporary extensions of certain FOIA deadlines to facilitate COVID-19 emergency response efforts	<ul style="list-style-type: none"> <li>• Orders that “[s]trict compliance with the required response periods set forth under sections 5(2), 10(2), and 10a(2) of the Freedom of Information Act (“FOIA”), 1976 PA 442, as amended, MCL 15.235(2), 15.240(2), and 15.240a(2), is temporarily suspended.”</li> <li>• Orders that “[s]trict compliance with the requirements relating to in-person efforts in connection with a public records request set forth under sections 3 and 4 of the FOIA, MCL 15.233 and 15.234, is temporarily suspended.”</li> </ul>
Executive Order 2020-39—Temporary relief from certain restrictions and requirements governing the provision of emergency medical services	<ul style="list-style-type: none"> <li>• Orders that “[s]trict compliance with the annual-inspection requirements for life support vehicles and life support agencies under section 20910(1)(e)(iii) of the Public Health Code, 1978 PA 368, as amended, MCL 333.20910(1)(e)(iii), is temporarily suspended” subject to certain conditions.</li> <li>• Orders that “strict compliance with the ambulance-staffing requirements under section 20921(3) of the Public Health Code, MCL 333.20921(3), is temporarily suspended” subject to certain conditions.</li> <li>• Suspends strict compliance with several other Michigan laws, all related to the provision of emergency services.</li> </ul>
Executive Order 2020-40—Temporary relief from certain credentialing requirements for motor carriers transporting essential supplies, equipment, and persons (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that “[t]he requirements administered by the Department of Treasury (“Department”) concerning licensure of motor carriers under section 5 of the Motor Carrier Fuel Tax Act (“MCFTA”), 1980 PA 119, as amended, MCL 207.215, are temporarily suspended and must not be enforced.”</li> </ul>



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	<ul style="list-style-type: none"> <li>• Orders that “[t]he requirements administered by the Department concerning decals for qualified commercial vehicles under section 5 of the MCFTA, MCL 207.215, are temporarily suspended” subject to certain conditions.</li> <li>• Orders that “[t]he requirements administered by the Department concerning trip permits for motor carriers under section 7 of the MCFTA, MCL 207.217, are temporarily suspended and must not be enforced” subject to certain conditions.</li> <li>• Orders that “[a]ny other requirements administered by the Department concerning the credentialing of motor carriers under the International Fuel Tax Agreement (“IFTA”) are temporarily suspended and must not be enforced” subject to certain conditions.</li> </ul>
Executive Order 2020-41—Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COVID-19 pandemic (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that “[s]trict compliance with rules and procedures under the Uniform Electronic Transactions Act (“UETA”), 2000 PA 305, as amended, MCL 450.831 et seq., and the Uniform Real Property Electronic Recording Act (“URPERA”), 2010 PA 123, as amended, MCL 565.841 et seq., is temporarily suspended to the extent necessary to permit the use of an electronic signature for a transaction whenever a signature is required under Michigan law, unless the law specifically mandates a physical signature.”</li> <li>• Orders that “[s]trict compliance the Michigan Law on Notarial Acts, 2003 PA 238, as amended, MCL 55.261 et seq., is temporarily suspended, to the extent it requires a notary to be in the physical presence of an individual seeking the notary’s services or of any required witnesses.”</li> <li>• Orders that “[a]ny requirement under Michigan law that an in-person witness attest to or acknowledge an instrument, document, or deed may be satisfied by the use of two-way real-time audiovisual technology, provided that” certain conditions are met.</li> <li>• Orders that the requirements in several additional Michigan laws mandating the physical presence of a person can be satisfied through the use of two-way video technology, provided that certain conditions are met.</li> </ul>
Executive Order 2020-42—Temporary requirement to suspend activities that are not necessary to sustain or protect life (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-21.</li> <li>• Prohibits “in-person work that is not necessary to sustain or protect life.”</li> <li>• Affirms and reinstates various rules in EO 2020-21.</li> <li>• Prohibits travel between two residences.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Orders stores of more than 50,000 square feet to close areas dedicated to carpet or flooring, furniture, garden centers and plant nurseries, and paint.</li> <li>• Implements additional measures designed to limit business operations and personal travel.</li> </ul>
Executive Order 2020-43—Temporary restrictions on the use of places of public accommodation (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds and replaces EO 2020-20.</li> <li>• Extends duration of restrictions found in 2020-20.</li> </ul>
Executive Order 2020-44—Enhanced support for deliveries (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-12.</li> <li>• Extends “the duration of [relief from load and delivery restrictions on motor carriers and drivers engaged in the transport of essential supplies, equipment, and persons] because it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents.”</li> </ul>
Executive Order 2020-45—Enhanced authorization of remote means for carrying out state administrative procedures (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-23.</li> <li>• Extends “the duration of [the] relief [set forth in EO 2020-23], because it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents.”</li> </ul>
Executive Order 2020-46—Mitigating the economic harms of the COVID-19 pandemic through the creation of a spirits buyback program for restaurants and bars throughout the state	<ul style="list-style-type: none"> <li>• Authorizes the Michigan Liquor Control Commission (“Commission”) “to offer to a licensee a cash buyback of any spirits a licensee orders from the Commission and received and accepted from an Authorized Distribution Agent before March 16, 2020. When a licensee opts into this buyback program, the Commission must advance to the licensee 100% of the purchase price of those spirits that are in the licensee’s inventory.”</li> </ul>
Executive Order 2020-47—Temporary extension of the validity of certain driver’s licenses, state identification cards, and vehicle registrations (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that “[i]ndividuals must, to the best of their ability, complete a vehicle registration or license renewal online at <a href="http://www.michigan.gov/sos/">www.michigan.gov/sos/</a> during the Declares states of emergency and disaster.”</li> <li>• Orders that certain provisions of the Motor Vehicle Code are temporarily suspended for purposes of the order if certain criteria are met.</li> </ul>
Executive order 2020-48—Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-15.</li> <li>• Orders that “[t]o the extent that the Open Meetings Act (“OMA”), 1976 PA 267, as amended, MCL 15.261 to 15.272, requires that a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body, strict compliance with</li> </ul>

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	<p>section 3 of the OMA, MCL 15.263, is temporarily suspended in order to alleviate any such physical-place or physical-presence requirements.”</p> <ul style="list-style-type: none"> <li>• Orders that “strict with subsection 6 of section 11a, subsection 7 of section 384, and subsection 1 of section 418a of the Revised School Code, 1976 PA 451, as amended, MCL 380.11a(6), MCL 380.384(7), and MCL 380.418a(1), is temporarily suspended so as not to require school district boards to hold meetings at least once each month.”</li> </ul>
Executive Order 2020-49—Temporary enhancements to operational capacity and efficiency of health care facilities (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-13.</li> <li>• Orders that the Department of Health and Human Services and the Department of Licensing and Regulatory Affairs may issue various certificates, licenses, and waivers to healthcare workers and facilities without requiring strict compliance with the Public Health Code in order to “ensure that there is an adequate supply of health care providers and facilities.”</li> </ul>
Executive Order 2020-50—Enhanced protections for residents and staff of long-term care facilities during the COVID-19 pandemic (Rescinded)	<ul style="list-style-type: none"> <li>• Orders that, “notwithstanding any statute, rule, regulation, or policy to the contrary,” long-term care facilities may not, among other things, evict or discharge residents for nonpayment, or prohibit admission based on COVID-19 testing requirements.</li> <li>• Orders that long-term care facilities must take steps to limit the transmission of COVID-19, including canceling group activities and communal dining, ensuring adequate disinfection and cleaning protocols, and using best efforts to provide appropriate PPE.</li> <li>• Orders that long-term care facilities must take specific steps when residents are infected with COVID-19, such as filing a report to a local health department within 24 hours and transferring unstable patients to a hospital.</li> <li>• Orders that “[t]o the extent necessary to effectuate this terms of this order, strict compliance with any statute, rule, regulation, or policy pertaining to bed hold requirements or procedures, or to pre-transfer or pre-discharge requirements or procedures, is temporarily Suspends” subject to certain conditions.”</li> </ul>
Executive Order 2020-51—Expanding child care access during the COVID-19 pandemic (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-16.</li> <li>• Clarifies and expands the scope of EO 2020-16, and continues to allow the operation of childcare centers without a license from LARA.</li> </ul>

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Executive Order 2020-52—Temporary extension of certain pesticide applicator certificates	<ul style="list-style-type: none"> <li>• Orders that “[n]otwithstanding any statute, rule, or regulation to the contrary, all three-year certificates for commercial applicators, private applicators, and registered applicators issued pursuant to Part 83 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.8301 et seq., that were set to expire on December 31, 2019, must be deemed unexpired and not to expire until 60 days after the end of the Declares states of emergency and disaster.”</li> </ul>
Executive Order 2020-53—Enhanced restrictions on price gouging (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-18.</li> <li>• “[S]trengthens ... and extends” the original restrictions on price gouging in EO 2020-18.</li> </ul>
Executive Order 2020-54—Temporary prohibition against entry to premises for the purpose of removing or excluding a tenant or mobile home owner from their home (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-19.</li> <li>• Clarifies and extends the restrictions in EO 2020-19.</li> </ul>
Executive Order 2020-56—Temporary enhancements to operational capacity, flexibility, and efficiency of pharmacies	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-25.</li> <li>• Clarifies and extends the duration of the provisions in EO 2020-25.</li> </ul>
Executive Order 2020-57—Temporary expansions in unemployment eligibility and cost-sharing (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-24.</li> <li>• Orders that “[s]trict compliance with subdivision (a) of subsection (1) of section 29 of the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, as amended (“Employment Security Act”), MCL 421.29(1)(a), is temporarily suspended,” subject certain conditions.</li> <li>• Orders that “[s]trict compliance with subsection (3) of section 48 of the Employment Security Act, MCL 421.48(3), is temporarily suspended to allow an individual who is on a leave of absence for any” identified reason.</li> <li>• “In order to allow employers and workers more flexibility in the use of shared-work plans, strict compliance with several [additional] sections of the Employment Security Act are temporarily suspended.”</li> </ul>
Executive Order 2020-58—Temporary suspension of certain timing requirements relating to the commencement of civil and probate actions and proceedings	<ul style="list-style-type: none"> <li>• Orders that “all deadlines applicable to the commencement of all civil and probate actions and proceedings, including but not limited to any deadline for the filing of an initial pleading and any statutory notice provision or other prerequisite related to the deadline for filing of such a pleading, are suspended</li> </ul>

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	as of March 10, 2020 and shall be tolled until the end of the declared states of disaster and emergency.”
Executive Order 2020-59—Temporary requirement to suspend activities that are not necessary to sustain or protect life (Rescinded)	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-42.</li> <li>• Requires all individuals to stay at home, with certain exceptions.</li> <li>• Halts all business operations except for operations of workers necessary to sustain or protect life, to conduct minimum basic operations, or to perform certain resumed activities in one of five categories.</li> <li>• Businesses permitted to continue in-person operations must provide “non-medical grade face coverings to their workers” and “personal protective equipment such as gloves, goggles, face shields, and face masks as appropriate for the activity being performed,” as well as take other mitigation measures.</li> <li>• Orders all individuals who can medical tolerate a face covering to wear one when in any enclosed public space.</li> </ul>
Executive Order 2020-60—Temporary safety measures for food-selling establishments and pharmacies and temporary relief from requirements applicable to the renewal of licenses for the food-service industry (Rescinded)	<ul style="list-style-type: none"> <li>• Requires all food-selling establishments and pharmacies to implement daily screening of employees, require checkout employees to wear face coverings, make work accommodations for employees in vulnerable populations, and close self-service and sampling stations, among other things.</li> <li>• Orders that “any individual who enters a food-selling establishment or pharmacy who is able to medically tolerate a face covering must wear a covering over his or her nose and mouth, such as a homemade mask, scarf, bandana, or handkerchief.”</li> </ul>
Executive Order 2020-61—Temporary relief from certain restrictions and requirements governing the provision of medical services	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-30 to extend duration and expand scope of its provisions.</li> <li>• Orders the suspension of certain provisions Article 15 of the Public Health Code, 1978 PA 368.</li> </ul>
Executive Order 2020-62—Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols and enhanced early-release authorization for	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-29.</li> <li>• Extends duration of provisions in EO 2020-29.</li> </ul>

**Exhibit 3**

county jails, local lockups, and juvenile detention centers	
Executive Order 2020-63—Temporarily suspending the expiration of personal protection orders	<ul style="list-style-type: none"> <li>• Orders that “all personal protection orders that would otherwise expire during the period from the date of the entry of this order through June 1, 2020 are extended, and now expire on July 21, 2020.”</li> </ul>
Executive Order 2020-64—Affirming anti-discrimination policies and requiring certain health care providers to develop equitable access to care protocols	<ul style="list-style-type: none"> <li>• Declares that it is “the public policy of this state that no person should be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person’s relative ‘worth,’ including judgments about a person’s worth based on the presence or absence of disabilities.”</li> <li>• Orders health care providers to take steps and develop protocols to ensure non-discrimination in the delivery of critical care and allocation of other medical resources.</li> </ul>
Executive Order 2020-65—Provision of K-12 education during the remainder of the 2019-2020 school year	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-35.</li> <li>• Extends, expands, and clarifies the restrictions in EO 2020-35.</li> <li>• Temporarily suspends certain portions of the Teachers’ Tenure Act, MCL 38.71 <i>et seq</i>, and the Great Start Readiness Program, MCL 388.1632, <i>et seq</i>.</li> </ul>
Executive Order 2020-66—Termination of the states of emergency and disaster declared under the Emergency Management Act in Executive Order 2020-33	<ul style="list-style-type: none"> <li>• Declares that “[t]wenty-eight days ... have elapsed since [Governor Whitmer] declared states of emergency and disaster under the Emergency Management Act in Executive Order 2020-33. And while [Governor Whitmer] ... sought the legislature’s agreement that these declared states of emergency and disaster should be extended, the legislature—despite the clear and ongoing danger to the state—has refused to extend them beyond today.”</li> <li>• Orders that “[t]he state of emergency declared under the Emergency Management Act in Executive Order 2020-33 is terminated.”</li> <li>• Orders that “[t]he state of disaster declared under the Emergency Management Act in Executive Order 2020-33 is terminated.”</li> </ul>
Executive Order 2020-67—Declaration of state of emergency under the Emergency Powers of the Governor Act, 1945 PA 302	<ul style="list-style-type: none"> <li>• Declares that “state disaster and emergency recovery efforts remain necessary” and that “[s]tatewide coordination of these efforts is crucial to creating a stable path to recovery. Until that recovery is underway, the economic and fiscal harms from this pandemic have been contained, and the threats posed by COVID-19 to life and the public health, safety, and welfare of this state have been neutralized, statewide disaster and emergency conditions will exist.”</li> </ul>

**Exhibit 3**

	<ul style="list-style-type: none"> <li>• Orders that a “state of emergency remains declared across the State of Michigan under the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.”</li> <li>• Rescinds and replaces EO 2020-33. States that “[a]ll previous orders that rested on Executive Order 2020-33 now rest on this order.”</li> </ul>
Executive Order 2020-68—Declaration of states of emergency and disaster under the Emergency Management Act, 1976 PA 390	<ul style="list-style-type: none"> <li>• Declares “a state of emergency and a state of disaster across the State of Michigan under the Emergency Management Act.”</li> <li>• Orders “[t]he Emergency Management and Homeland Security Division of the Department of State Police must coordinate and maximize all state efforts that may be activated to state service to assist local governments and officials and may call upon all state departments to utilize available resources to assist.”</li> <li>• Declares that “[a]ll previous orders that rested on Executive Order 2020-33 now rest on this order.”</li> </ul>
Executive Order 2020-69—Temporary restrictions on the use of places of public accommodation	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-43.</li> <li>• Extends the provisions of EO 2020-43 through May 28, 2020.</li> </ul>
Executive Order 2020-70—Temporary requirement to suspend activities that are not necessary to sustain or protect life	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-59.</li> <li>• Reaffirms and amends the measures set forth in EO 2020-59.</li> <li>• Orders that, subject to certain exceptions, “all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence.”</li> <li>• Orders that, subject to certain exceptions, “[n]o person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life, to conduct minimum basic operations, or to perform a resumed activity within the meaning of this order.”</li> <li>• Orders that certain industries, including construction, real-estate activities, and work that is traditionally and primarily performed outdoors” can resume on May 7, 2020, subject to “stringent precautionary measures.”</li> <li>• Orders that stores permitted to remain open for in-store sales under this Order must take steps such as limiting total occupancy, creating two hours per week of dedicated shopping times for vulnerable populations, and considering the establishment of curbside pick-up.</li> </ul>



**Exhibit 3**

	<ul style="list-style-type: none"> <li>• Orders all individuals medically able to tolerate a face covering to wear a covering over his or her nose and mouth when in any “enclosed public space.”</li> </ul>
Executive Order 2020-71—Temporary safety measures for food-selling establishments and pharmacies and temporary relief from requirements applicable to the renewal of licenses for the food-service industry	<ul style="list-style-type: none"> <li>• Rescinds, extends, and clarifies EO 2020-60.</li> <li>• Orders “[a]ny individual who enters a food-selling establishment or pharmacy who is able to medically tolerate a face covering must wear a covering over his or her nose and mouth, such as a homemade mask, scarf, bandana, or handkerchief.”</li> <li>• Orders grocery stores and pharmacies to “create at least two hours per week of dedicated shopping time for vulnerable populations.”</li> <li>• Orders food-selling establishment and pharmacies to “deploy strategies to reduce COVID-19 exposure for their customers and employees,” which are to include developing and implementing a specified daily screening program for all staff, requiring checkout employees to wear masks, allowing employees sufficient break time to wash their hands, and providing disinfecting wipes at cash registers, among others.</li> <li>• Suspends strict compliance with portions of the Food Law, 92 PA 2000, as amended.</li> </ul>
Executive Order 2020-72—Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-37.</li> <li>• Reinstates and extends the restrictions in EO 2020-37.</li> </ul>
Executive Order 2020-73— Temporary relief from certain credentialing requirements for motor carriers transporting essential supplies, equipment, and persons	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-40.</li> <li>• Reinstates and extends the provisions in EO 2020-40.</li> </ul>
Executive Order 2020-74—Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COVID-19 pandemic	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-41.</li> <li>• Reinstates, extends, and expands the provisions in EO 2020-41.</li> <li>• Suspends strict compliance with the Uniform Electronic Transactions Act, as amended, MCL 450.831 <i>et seq.</i>, and the Uniform Real Property Electronic Recording Act, as amended, MCL 565.841 <i>et seq.</i>, “to the extent necessary to permit the use of an electronic signature for a transaction whenever a signature</li> </ul>



**Exhibit 3**

	<p>is required” under Michigan law, unless the law specifically mandates a physical signature.</p> <ul style="list-style-type: none"> <li>• Suspends strict compliance the Michigan Law on Notarial Acts, as amended, MCL 55.261 et seq., “to the extent it requires a notary to be in the physical presence of an individual seeking the notary’s services or of any required witnesses.”</li> <li>• Orders that the requirements in several Michigan laws mandating the physical presence of a person can be satisfied through the use of two-way video technology, provided that certain conditions are met.</li> </ul>
Executive Order 2020-75—Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards	<ul style="list-style-type: none"> <li>• Rescinds and extends the provision of EO 2020-48, suspending “rules and procedures relating to physical presence at meetings and hearings of public bodies and other governmental entities in Michigan.”</li> </ul>
Executive Order 2020-76—Temporary expansions in unemployment eligibility and cost-sharing	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-57.</li> <li>• “[C]ontinues [the] provisions” under EO 2020-57 “and relaxes certain other requirements in order to allow the Unemployment Insurance Agency to more quickly process unemployment claims.”</li> <li>• Suspends strict compliance with several provisions of the Employment Security Act, 1936 (Ex Sess) PA 1, as amended, the Michigan Administrative Code, and section 68c of the State Employees Retirement Act, 1943 PA 240.</li> </ul>
Executive Order 2020-77—Temporary requirement to suspend certain activities that are not necessary to sustain or protect life	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-70.</li> <li>• Reaffirms the measures set forth in EO 2020-77, including the measures requiring individuals to shelter-in-place and prohibiting most in-person business operations, subject to certain amendments.</li> <li>• Reaffirms and modifies specific protocols that must be adopted and implemented by businesses performing construction work.</li> <li>• Orders that manufacturing work may resume on May 11, subject to numerous “workplace safeguards,” including conducting daily screening of all individuals entering manufacturing facilities and conducting certain training of workers, among others.</li> </ul>
Executive Order 2020-78—Temporary extension of the validity of driver licenses, state	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-47 and “extends [the] duration and expands [the] scope” of the provisions in EO 2020-47.</li> </ul>

**Exhibit 3**

identification cards, and certain vehicle registrations	<ul style="list-style-type: none"> <li>• Suspends strict compliance with the Michigan Vehicle Code to the extent it requires certifications or renewals in order to maintain licenses or insurance coverage.</li> </ul>
Executive Order 2020-79— Temporary suspension of youth work permit application requirements	<ul style="list-style-type: none"> <li>• Declares that “it is reasonable and necessary to temporarily suspend certain requirements related Exeto obtaining work permits for youth workers” in order to “ensure the availability of youth workforce, and to continue to mitigate the spread of COVID-19, protect public health, and provide protections to vulnerable Michiganders of all ages.”</li> <li>• Suspends strict compliance with section 5 of the Youth Employment Standards Act, 1978 PA 90 to the extent the Act “requires an application of a work permit to be made in person.”</li> <li>• Suspends strict compliance with section 6 of the Youth Employment Standards Act “such that the color of work permits for minors under 16 years of age does not need to be distinct from that of work permits for minors 16 years of age and over.”</li> </ul>
Executive Order 2020-80— Enhanced authorization of remote means for carrying out state administrative procedures	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-45.</li> <li>• Reinstates and extends the provisions of EO 2020-45.</li> </ul>
Executive Order 2020-81—Enhanced support for deliveries	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-44.</li> <li>• Reinstates and extends certain provisions of EO 2020-44.</li> </ul>
Executive Order 2020-82—Temporary enhancements to operational capacity and efficiency of health care facilities	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-49.</li> <li>• Reinstates and extends the provisions of EO 2020-49.</li> </ul>
Executive Order 2020-83—Expanding child care access during the COVID-19 pandemic	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-51.</li> <li>• Reinstates and extends the provisions of EO 2020-51.</li> </ul>
Executive Order 2020-84—Enhanced protections for residents and staff of long-term care facilities during the COVID-19 pandemic	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-50.</li> <li>• Reinstates and extends the provisions of EO 2020-50.</li> </ul>
Executive Order 2020-85—Temporary prohibition against entry to premises for the	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-54.</li> <li>• Reinstates and extends the provisions of EO 2020-54.</li> </ul>

**Exhibit 3**

purpose of removing or excluding a tenant or mobile home owner from their home	
Executive Order 2020-86— Encouraging the use of telehealth services during the COVID-19 emergency	<ul style="list-style-type: none"> <li>• Declares that it is “reasonable and necessary to enable the use of telehealth services in new contexts and encourage expansion of telehealth services through other means.”</li> <li>• Orders that “All health care providers are authorized and encouraged to use telehealth services when medically appropriate and upon obtaining patient consent.”</li> <li>• Suspends strict compliance with portions of the Insurance Code of 1956, Act 218 of 1956, imposing requirements on the provision of telemedicine.</li> <li>• Orders that insurance carriers “must cover virtual check-ins and e-visits.”</li> <li>• Orders that, under certain conditions, “[t]elehealth services are covered under the Michigan Medicare/Medicaid Assistance Program and Healthy Michigan Plan.”</li> <li>• Suspends strict compliance with portions of the Public Health Code, the Mental Health Code, and the Michigan Medicare Marihuana Act, among others, in order to encourage the provision of telehealth services, including requirements relating to licensing and the prescription of controlled medications.</li> </ul>
Executive Order 2020-87— Temporary extension of deadlines for boards of review, county equalization, and tax tribunal jurisdiction	<ul style="list-style-type: none"> <li>• Suspends strict compliance with deadlines in the General Property Tax Act (“GPTA”), 1893 PA 206, as amended, related to the completion and filing of reviews of assessments and assessment rolls for 2020 by a county, city, or township officials.</li> <li>• Suspends strict compliance with deadlines of the GPTA and the State Board of Equalization Act, 1911 PA 44, as amended, requiring county boards of commissioners to determine county equalized values and transmit the same to the State Tax Commission.</li> <li>• Suspends deadlines in the GPTA and the Tax Tribunal Act, 1973 PA 186, as amended, related to the filing, procession, and resolution of protests, disputes, and appeals of property tax assessments.</li> </ul>
Executive Order 2020-88— COVID-19 Return to School Advisory Council	<ul style="list-style-type: none"> <li>• Orders the creation of a “Return to School Advisory Council” within the Department of Technology, Management, and Budget, the members of which will be appointed by the Governor.</li> </ul>

**Exhibit 3**

	<ul style="list-style-type: none"> <li>• Orders the Council to research, develop and submit recommendations regarding the “safe, equitable, and efficient K-12 return to school in the Fall,” including recommendations “to remove statutory and administrative barriers to delivering education before Phase 6 of the MI Safe Start Plan.”</li> <li>• Orders that all “departments, committees, commissioners, or officers of this state must give to the Council, or to any member or representative of the Council, any necessary assistance required by the Council” or its members.</li> <li>• Orders the Council to “refer all legal, legislative, and media contacts to the Executive Office of the Governor.”</li> </ul>
Executive Order 89— Enhanced restrictions on price gouging	<ul style="list-style-type: none"> <li>• Rescinds EO 2020-53.</li> <li>• Reinstates and extends the provisions of EO 2020-53.</li> </ul>
Executive Order 90— Resumption of laboratory services	<ul style="list-style-type: none"> <li>• Declares that Governor Whitmer finds “that we will soon be positioned to allow another segment of previously suspended [in-person] work to resume: laboratory research. This work, like the resumed activities allowed under Executive Order 2020-77, will be subject to stringent precautionary measures.”</li> <li>• Orders that “workers necessary to conduct research activities in a laboratory setting are considered workers who perform resumed activities within the meaning of section 10 of Executive Order 2020-77.”</li> <li>• Orders that “[r]esearch laboratories, but not laboratories that perform diagnostic testing, must adhere to the workplace safeguards described in subsection 11(a) through (h) of Executive Order 2020-77,” as well as several additional conditions.</li> </ul>

# **EXHIBIT 4**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

## EXECUTIVE ORDER

No. 2020-17

### Temporary restrictions on non-essential medical and dental procedures

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, I issued Executive Order 2020-4. This order declared 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.

The Emergency Management Act vests the governor with broad powers and duties to “cop[e] with dangers to this state or the people of this state presented by a disaster or emergency,” which the governor may implement through “executive orders, proclamations, and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, provide essential protections to vulnerable Michiganders, and ensure the availability of health care resources, it is reasonable and necessary to impose temporary restrictions on non-essential medical and dental procedures.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Beginning as soon as possible but no later than March 21, 2020 at 5:00 pm, and continuing while the state of emergency declared in Executive Order 2020-4 is in effect, all hospitals, freestanding surgical outpatient facilities, and dental facilities, and all state-operated outpatient facilities (collectively, “covered facilities”), must implement a plan to temporarily postpone, until the termination of the state of emergency under section 3 of Executive Order 2020-4, all non-essential procedures (“non-essential procedure postponement plan” or “plan”). For purposes of this order, “non-essential procedure” means a medical or dental procedure that is not necessary to address a medical emergency or to preserve the health and safety of a patient, as determined by a licensed medical provider.
2. A plan for a covered facility that performs medical procedures, including any medical center or office that performs elective surgery or cosmetic plastic surgery, must postpone, at a minimum, joint replacement, bariatric surgery, and cosmetic surgery, except for emergency or trauma-related surgery where postponement would significantly impact the health, safety, and welfare of the patient. A plan for a covered facility that performs medical procedures should exclude from postponement: surgeries related to advanced cardiovascular disease (including coronary artery disease, heart failure, and arrhythmias) that would prolong life; oncological testing, treatment, and related procedures; pregnancy-related visits and procedures; labor and delivery; organ transplantation; and procedures related to dialysis. A plan for a covered facility that performs medical procedures must exclude from postponement emergency or trauma-related procedures where postponement would significantly impact the health, safety, and welfare of the patient.
3. A plan for a covered facility that performs dental procedures must postpone, at a minimum: any cosmetic or aesthetic procedures (such as veneers, teeth bleaching, or cosmetic bonding); any routine hygiene appointments; any orthodontic procedures that do not relieve pain or infection, do not restore oral function, or are not trauma-related; initiation of any crowns, bridges, or dentures that do not relieve pain or infection, do not restore oral function, or are not trauma-related; any periodontal plastic surgery; any extractions of asymptomatic non-carious teeth; and any recall visits for periodontally healthy patients. If a covered facility that performs dental procedures chooses to remain open, its plan must exclude from postponement emergency or trauma-related procedures where postponement would significantly impact the health, safety, and welfare of the patient.
4. A covered facility must comply with the restrictions contained in its non-essential procedure postponement plan.
5. This order does not alter any of the obligations under law of an affected health care facility to its employees or to the employees of another employer.
6. The director of the Department of Licensing and Regulatory Affairs shall issue orders or directives pursuant to law as necessary to enforce this order.

7. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.

Date: March 20, 2020

Time: 12:28 pm



GRETCHEN WHITMER  
GOVERNOR

By the Governor:

  
SECRETARY OF STATE

SENATE JOURNAL  
MAR 20 2020 PM 3:16

FILED WITH SECRETARY OF STATE

ON 3/20/20 AT 2:48 P.M.



# **EXHIBIT 5**



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

GRETCHEN WHITMER  
GOVERNOR

ROBERT GORDON  
DIRECTOR

May 3, 2020

Dear Michigan Clinicians,

We appreciate the leadership of health care systems and clinicians across the state who have worked tirelessly to care for patients during the COVID-19 pandemic. Our front-line healthcare workers have provided exceptional care, and many have put their own lives and the lives of their families at risk. Some have even lost their lives. I am forever in gratitude for your service.

While we are cautiously optimistic about the plateau in the number of cases of COVID-19 across the state, we continue to see many cases daily, as well as deaths. Michigan currently has the third highest number of COVID-19-related deaths in the United States. Governor Whitmer's Executive Order 2020-17, Temporary Restrictions on Non-Essential Medical and Dental Procedures, was put in place to assure our healthcare systems had enough staffing, bed capacity, and personal protective equipment to be able to take care of patients, as well as to limit spread of COVID-19. As we continue to fight the COVID-19 pandemic we are in constant consideration of how to safely and responsibly provide care for our patients, while maintaining the safety of healthcare workers.

I recognize some have questions about Executive Order 2020-17, including what is allowable under the order and how to start to re-engage with patients for important care. This letter provides guidance to consider in determining the timeliness and necessity of care for individual patients.

The provisions of the Executive Order No. 2020-17 state the following:

1. Beginning as soon as possible but no later than March 21, 2020 at 5:00 pm, and continuing while the state of emergency declared in Executive 2020-4 is in effect, all hospitals, freestanding surgical outpatient facilities, and dental facilities, and all state-operated outpatient facilities (collectively, "covered facilities"), must implement a plan to temporarily postpone, until the termination of the state of emergency under section 3 of Executive Order 2020-4, all non-essential procedures ("non-essential procedure postponement plan" or "plan"). For purposes of this order, "non-essential procedure" means a medical or dental procedure that is not necessary to address a medical emergency or to preserve the health and safety of a patient, as determined by a licensed medical provider.

2. A plan for a covered facility that performs medical procedures, including any medical center or office that performs elective surgery or cosmetic plastic surgery, must postpone, at a minimum, joint replacement, bariatric surgery, and cosmetic surgery, except for emergency or trauma-related surgery where postponement would significantly impact the health, safety, and welfare of the patient. A plan for a covered facility that performs medical procedures should *exclude* from postponement: surgeries related to advanced cardiovascular disease (including coronary artery disease, heart failure, and arrhythmias) that would prolong life; oncological testing, treatment, and related procedures; pregnancy-related visits and procedures; labor and delivery; organ transplantation; and procedures related to dialysis. A plan for a covered facility that performs medical procedures must exclude from postponement emergency or trauma-related procedures where postponement would significantly impact the health, safety, and welfare of the patient.

3. A plan for a covered facility that performs dental procedures must postpone, at a minimum: any cosmetic or aesthetic procedures (such as veneers, teeth bleaching, or cosmetic bonding); any routine hygiene appointments; any orthodontic procedures that do not relieve pain or infection, do not restore oral function, or are not trauma-related; initiation of any crowns, bridges, or dentures that do not relieve pain or infection, do not restore oral function, or are not trauma-related; any periodontal plastic surgery; any extractions of asymptomatic non-carious teeth; and any recall visits for periodontally healthy patients. If a covered facility that performs dental procedures chooses to remain open, its plan must exclude from postponement emergency or trauma-related procedures where postponement would significantly impact the health, safety, and welfare of the patient.

This wording is intended to be flexible, preserve clinician judgement, and encourage consideration on an individual basis of which patient services can be safely delayed without resulting in a significant decline in health. **EO 2020-17 gives providers broad discretion to apply this standard.** I have had the pleasure of speaking to many physician and health system leaders in recent days and applaud current efforts to re-engage with patients in the safest way possible and within the scope of Executive Order 2020-17. Consistent with Executive Order 2020-17, the following guidelines and principles (which are non-binding suggestions unless otherwise indicated) should be considered as clinicians and hospitals plan reengagement of patients in need of medical services:

**1. Limit in-person contact as much as possible and implement best practices for infection prevention and control.**

- Maximize the use of telehealth. Clinicians can determine if an in-person visit is necessary. An initial phone call to collect pertinent information can reduce the time needed for an in-person visit. In some cases, a post-procedure telehealth visit may be an alternative to an in-person visit.
- Consider eliminating waiting room times altogether for ambulatory visits. Ask patients to wait in their cars until the time of their appointment if feasible. If that cannot be done, consider implementing the following:

- Arrange waiting rooms such that patients are kept at least six feet apart.
  - Remove magazines, books and toys from waiting areas.
  - Do not offer food or drink in waiting areas.
  - Have clear markings and signage for patients indicating where they should stand or wait.
- Patients and visitors who can medically tolerate a face covering should wear cloth face coverings at all times. If they do not bring one to the office, surgical facemasks should be provided.
- Perform frequent cleanings of patient waiting and care areas. Pay special attention to frequently touched surfaces.
- Categorize patients into risk strata for COVID-19 exposure. Consider seeing patients at lower risk of severe outcomes from COVID-19 on one day, and high risk on another. Alternatively, consider having separate blocks of time for seeing higher risk patients.
- Assure any clinical site has sufficient PPE for all staff.
- Consider separate entrances for well and sick visits.
- As required by Executive Order 2020-72, limit visitation and perform fever and symptom checks for all patients, visitors, and employees.
- Consider discharge as early as safely possible, arranging home health care services as appropriate.
- Ensure patient safety during transitions of care. Promote strategies for timely communication between inpatient and outpatient providers with an emphasis on confirming that a patient's primary care provider or provider team has received results of important diagnostic tests, medication reconciliation lists, and follow-up recommendations.

## **2. Systematically prioritize in-person patient interactions.**

- Encourage prioritizing appointments for your most vulnerable patients, particularly those with chronic diseases who may need laboratory or other diagnostic work done or have had difficulty managing their disease in the past. Evaluate the need for a well-visit if in your clinical judgement postponement of the visit would significantly impact the health, safety, and welfare of the patient.
- Consider stratification of the care or procedures you intend to provide into categories based on need or urgency.
- Consider allowing medical visits for immunizations. Delayed immunizations can put individuals and communities at risk of vaccine-preventable diseases. Consider reaching out to families to schedule immunization visits in future months, so that patients can remain up to date.
- Recognize that procedures or visits that were not time-sensitive several weeks ago may now be, based on clinician judgment. Certain laboratory or radiological tests may be performed under the current executive order, if it is determined by a licensed medical provider that these tests are necessary to preserve the health, safety, and welfare of the patient. This may include pre-operative tests for planned procedures.

**3. Reassure patients of appropriate safety measures:**

- Utilize diagnostic testing for COVID-19 when available as deemed clinically appropriate. Recognize that a negative COVID-19 test at a single point in time does not guarantee that a patient does not have the disease, nor that they have not become infected in the time since their test sample was obtained. This should be considered when making decisions regarding implementation of PPE, and isolation and quarantine protocols in your facility.
- Provide appropriate PPE for staff and patients following CDC and local health department guidance.

**4. Assure appropriate surge capacity and develop emergency plans**

- Develop specific and written plans for how your clinic or system will incrementally start doing procedures while maintaining the safety of patients and staff.
- Assure adequate beds, PPE, staffing, supplies, and medication are on hand to take care of both COVID and non-COVID patients.
- Continue to conserve PPE and maintain an appropriate surge plan should there be an increased demand for care.
- Have plans in place for how you may need to restrict procedures and visits should a surge in COVID cases occur. Follow the epidemiology and trends of the disease in your region. The most up to date information can be found at [www.michigan.gov/coronavirus](http://www.michigan.gov/coronavirus).

More information about best practices for infection prevention and control can be found on the [CDC's website](https://www.cdc.gov). The above guidance is not a substitute for clinician judgement in providing individualized medical care for patients. Furthermore, now is a great time to proactively communicate with your patients about the dangers of delaying important medical care. Any patient with signs or symptoms consistent with possible life-threatening disease should not have diagnostic testing or treatment delayed. Speak with your patients about the safety plans you have in place and how you are prepared to take care of them in a safe environment.

Thank you for all you have done to respond heroically in this epidemic. I look forward to continuing to work with you as we protect the health and safety of all Michiganders.

Sincerely,



Joneigh S. Khaldun, MD, MPH, FACEP  
Chief Medical Executive  
Chief Deputy Director for Health  
Michigan Department of Health and Human Services

# **EXHIBIT 6**



STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GRETCHEN WHITMER  
GOVERNOR

GARLIN GILCHRIST II  
LT. GOVERNOR

**EXECUTIVE ORDER**

**No. 2020-21**

**Temporary requirement to suspend activities that  
are not necessary to sustain or protect life**

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. Older adults and those with chronic health conditions are at particular risk, and there is an increased risk of rapid spread of COVID-19 among persons in close proximity to one another. 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, I issued Executive Order 2020-4. This order declared 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.

The Emergency Management Act vests the governor with broad powers and duties to “cop[e] with dangers to this state or the people of this state presented by a disaster or emergency,” which the governor may implement through “executive orders, proclamations, and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945, provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To suppress the spread of COVID-19, to prevent the state’s health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible.

This order takes effect on March 24, 2020 at 12:01 am, and continues through April 13, 2020 at 11:59 pm.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. Subject to the exceptions in section 7, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.
3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the individual's household to the extent feasible under the circumstances.
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations.

(a) For purposes of this order, workers who are necessary to sustain or protect life are defined as "critical infrastructure workers," as described in sections 8 and 9.

(b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Such designations, however, may be made orally until March 31, 2020 at 11:59 pm.

5. Businesses and operations that employ critical infrastructure workers may continue in-person operations, subject to the following conditions:

(a) Consistent with sections 8 and 9, businesses and operations must determine which of their workers are critical infrastructure workers and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Such designations, however, may be made orally until March 31, 2020 at 11:59 pm. Businesses and operations need not designate:



- (1) Workers in health care and public health.
    - (2) Workers who perform necessary government activities, as described in section 6.
    - (3) Workers and volunteers described in section 9(d).
  - (b) In-person activities that are not necessary to sustain or protect life must be suspended until normal operations resume.
  - (c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons. Those practices and measures include, but are not limited to:
    - (1) Restricting the number of workers present on premises to no more than is strictly necessary to perform the business's or operation's critical infrastructure functions.
    - (2) Promoting remote work to the fullest extent possible.
    - (3) Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible, including for customers who are standing in line.
    - (4) Increasing standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
    - (5) Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person who is known or suspected to have COVID-19.
    - (6) Any other social distancing practices and mitigation measures recommended by the Centers for Disease Control.
6. All in-person government activities at whatever level (state, county, or local) that are not necessary to sustain or protect life, or to supporting those businesses and operations that are necessary to sustain or protect life, are suspended.
- (a) For purposes of this order, necessary government activities include activities performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders.
  - (b) Such activities also include, but are not limited to, public transit, trash pick-up and disposal, activities necessary to manage and oversee elections, operations necessary to enable transactions that support the work of a business's or operation's critical infrastructure workers, and the maintenance of safe and sanitary public parks so as to allow for outdoor recreation.

- (c) For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b). Workers performing such activities need not be designated.
- (d) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 5(c).

7. Exceptions.

- (a) Individuals may leave their home or place of residence, and travel as necessary:
  - (1) To engage in outdoor activity, including walking, hiking, running, cycling, or any other recreational activity consistent with remaining at least six feet from people from outside the individual's household.
  - (2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) may leave their home for work without a designation.)
  - (3) To conduct minimum basic operations, as described in section 4(b), after being designated to perform such work by their employers.
  - (4) To perform necessary government activities, as described in section 6.
  - (5) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including procedures that, in accordance with a duly implemented nonessential procedures postponement plan, have not been postponed).
  - (6) To obtain necessary services or supplies for themselves, their family or household members, and their vehicles. *Individuals must secure such services or supplies via delivery to the maximum extent possible.* As needed, however, individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences.
  - (7) To care for a family member or a family member's pet in another household.

- (8) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
  - (9) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
  - (10) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
  - (11) To work or volunteer for businesses or operations (including both and religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
- (b) Individuals may also travel:
- (1) To return to a home or place of residence from outside this state.
  - (2) To leave this state for a home or residence elsewhere.
  - (3) To travel between two residences in this state.
  - (4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.
8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). Such workers include some workers in each of the following sectors:
- (a) Health care and public health.
  - (b) Law enforcement, public safety, and first responders.
  - (c) Food and agriculture.
  - (d) Energy.
  - (e) Water and wastewater.
  - (f) Transportation and logistics.
  - (g) Public works.
  - (h) Communications and information technology, including news media.
  - (i) Other community-based government operations and essential functions.

- (j) Critical manufacturing.
- (k) Hazardous materials.
- (l) Financial services.
- (m) Chemical supply chains and safety.
- (n) Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

- (a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of critical infrastructure workers as defined in this order. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of critical infrastructure workers.
- (b) Workers at designated suppliers and distribution centers, as described below.
  - (1) A business or operation that employs critical infrastructure workers may designate suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the work of its critical infrastructure workers.
  - (2) Such suppliers, distribution centers, or service providers may designate workers as critical infrastructure workers *only* to the extent those workers are necessary to enable, support, or facilitate the work of the original operation's or business's critical infrastructure workers.
  - (3) Designated suppliers, distribution centers, and service providers may in turn designate additional suppliers, distribution centers, and service providers whose continued operation is necessary to enable, support, or facilitate the work of their critical infrastructure workers.
  - (4) Such additional suppliers, distribution centers, and service providers may designate workers as critical infrastructure workers *only* to the extent that those workers are necessary to enable, support, or facilitate the work of the critical infrastructure workers at the supplier, distribution center, or service provider that has designated them.
  - (5) Businesses, operations, suppliers, distribution centers, and service providers must make all designations in writing to the entities they are designating, whether by electronic message, public website, or other appropriate means. Such designations may be made orally until March 31, 2020 at 11:59 pm.

- (6) Businesses, operations, suppliers, distribution centers, and service providers that abuse their designation authority shall be subject to sanctions to the fullest extent of the law.
  - (c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.
  - (d) Workers and volunteers for businesses or operations (including both and religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
  - (e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
- 10. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, a place of religious worship, when used for religious worship, is not subject to penalty under section 14.
- 11. 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.
- 12. This order takes effect on March 24, 2020 at 12:01 am, and continues through April 13, 2020 at 11:59 pm.
- 13. The governor will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, she will consider, among other things, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health-care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.
- 14. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.

Date: March 23, 2020

Time: 10:39 am



GRETCHEN WHITMER  
GOVERNOR

By the Governor:



SECRETARY OF STATE



FILED WITH SECRETARY OF STATE

ON 3/23/2020 AT 11:51 am

# **EXHIBIT 7**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

## EXECUTIVE ORDER

No. 2020-42

**Temporary requirement to suspend activities that  
are not necessary to sustain or protect life**

**Rescission of Executive Order 2020-21**

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, I issued Executive Order 2020-4. This order declared 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 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on 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.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).



To suppress the spread of COVID-19, to prevent the state's health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. The order limited gatherings and travel, and required workers who are not necessary to sustain or protect life to stay home.

The measures put in place by Executive Order 2020-21 have been effective, but this virus is both aggressive and persistent: on April 8, 2020, Michigan reported 20,346 confirmed cases of COVID-19 and 959 deaths from it. To win this fight, and to protect the health and safety of our state and each other, we must be just as aggressive and persistent. Though we have all made sacrifices, we must be steadfast. Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-21, clarify them, and extend their duration to April 30, 2020. This order takes effect on April 9, 2020 at 11:59 pm. When this order takes effect, Executive Order 2020-21 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.
3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention ("CDC"), including remaining at least six feet from people from outside the individual's household to the extent feasible under the circumstances.
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations.
  - (a) For purposes of this order, workers who are necessary to sustain or protect life are defined as "critical infrastructure workers," as described in sections 8 and 9 of this order.
  - (b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 10 of this order.

5. Businesses and operations that employ critical infrastructure workers may continue in-person operations, subject to the following conditions:
  - (a) Consistent with sections 8 and 9 of this order, businesses and operations must determine which of their workers are critical infrastructure workers and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work. Businesses and operations need not designate:
    - (1) Workers in health care and public health.
    - (2) Workers who perform necessary government activities, as described in section 6 of this order.
    - (3) Workers and volunteers described in section 9(d) of this order.
  - (b) In-person activities that are not necessary to sustain or protect life must be suspended until normal operations resume.
  - (c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 10 of this order. Stores that are open to the public must also adhere to the rules described in section 11 of this order.
6. All in-person government activities at whatever level (state, county, or local) that are not necessary to sustain or protect life, or to support those businesses and operations that are necessary to sustain or protect life, are suspended.
  - (a) For purposes of this order, necessary government activities include activities performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders.
  - (b) Such activities also include, but are not limited to, public transit, trash pick-up and disposal (including recycling and composting), activities necessary to manage and oversee elections, operations necessary to enable transactions that support the work of a business's or operation's critical infrastructure

workers, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.

- (c) For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.
- (d) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 10 of this order.

7. Exceptions.

- (a) Individuals may leave their home or place of residence, and travel as necessary:
  - (1) To engage in outdoor physical activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor physical activity includes walking, hiking, running, cycling, kayaking, canoeing, or other similar physical activity, as well as any comparable activity for those with limited mobility.
  - (2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)
  - (3) To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.
  - (4) To perform necessary government activities, as described in section 6 of this order.
  - (5) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including procedures that, in accordance with a duly implemented nonessential procedures postponement plan, have not been postponed).
  - (6) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their vehicles.
    - (A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to

purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences. Individuals may also leave the home to drop off a vehicle to the extent permitted under section 9(i) of this order.

(B) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.

- (7) To care for a family member or a family member's pet in another household.
- (8) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
- (9) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
- (10) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
- (11) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
- (12) To attend a funeral, provided that no more than 10 people are in attendance at the funeral.

(b) Individuals may also travel:

- (1) To return to a home or place of residence from outside this state.
- (2) To leave this state for a home or residence elsewhere.
- (3) Between two residences in this state, through April 10, 2020. After that date, travel between two residences is not permitted.
- (4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.

(c) All other travel is prohibited, including all travel to vacation rentals.

8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available

here). This order does *not* adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

- (a) Health care and public health.
- (b) Law enforcement, public safety, and first responders.
- (c) Food and agriculture.
- (d) Energy.
- (e) Water and wastewater.
- (f) Transportation and logistics.
- (g) Public works.
- (h) Communications and information technology, including news media.
- (i) Other community-based government operations and essential functions.
- (j) Critical manufacturing.
- (k) Hazardous materials.
- (l) Financial services.
- (m) Chemical supply chains and safety.
- (n) Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

- (a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of workers required to perform in-person work as permitted under this order. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.
- (b) Workers at suppliers, distribution centers, or service providers, as described below.
  - (1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided

that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

- (2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (3) Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
- (c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.
  - (d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
  - (e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
  - (f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
  - (g) Workers at laundromats, coin laundries, and dry cleaners.



- (h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
  - (i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.
10. Businesses, operations, and government agencies that continue in-person work must adhere to sound social distancing practices and measures, which include but are not limited to:
- (a) Developing a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available here. Such plan must be available at company headquarters or the worksite.
  - (b) Restricting the number of workers present on premises to no more than is strictly necessary to perform the business's, operation's, or government agency's critical infrastructure functions or its minimum basic operations.
  - (c) Promoting remote work to the fullest extent possible.
  - (d) Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible.
  - (e) Increasing standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
  - (f) Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
  - (g) Any other social distancing practices and mitigation measures recommended by the CDC.
11. Any store that remains open for in-person sales under section 5 or 9(f) of this order must:
- (a) Establish lines to regulate entry in accordance with subsections (c) and (d) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.

- (b) Consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
  - (c) For stores of less than 50,000 square feet of customer floor space, limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.
  - (d) For stores of more than 50,000 square feet:
    - (1) Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space. The amount of customer floor space must be calculated to exclude store areas that are closed under subprovision (2) of this subsection.
    - (2) Close areas of the store—by cordoning them off, placing signs in aisles, posting prominent signs, removing goods from shelves, or other appropriate means—that are dedicated to the following classes of goods:
      - (A) Carpet or flooring.
      - (B) Furniture.
      - (C) Garden centers and plant nurseries.
      - (D) Paint.
    - (3) By April 13, 2020, refrain from the advertising or promotion of goods that are not groceries, medical supplies, or items that are necessary to maintain the safety, sanitation, and basic operation of residences.
    - (4) Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.
  - (e) The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in subsections (c) and (d) of this section as necessary to protect the public health.
12. No one shall advertise or rent a short-term vacation property except as necessary to assist in housing a health care professional or volunteer aiding in the response to the COVID-19 crisis.
13. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior



guidance, a place of religious worship, when used for religious worship, is not subject to penalty under section 17 of this order.

14. 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.
15. This order takes effect on April 9, 2020 at 11:59 pm and continues through April 30, 2020 at 11:59 pm. When this order takes effect, Executive Order 2020-21 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.
16. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health-care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.
17. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 9, 2020

Time: 2:07 pm



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GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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SECRETARY OF STATE

# **EXHIBIT 8**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

## **EXECUTIVE ORDER**

**No. 2020-59**

**Temporary requirement to suspend activities that  
are not necessary to sustain or protect life**

**Rescission of Executive Order 2020-42**

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 Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared 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 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on 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.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945, provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

To suppress the spread of COVID-19, to prevent the state's health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, to establish the public health infrastructure necessary to contain the spread of infection, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe, and then extended that order through April 30, 2020, with Executive Order 2020-42. The orders limited gatherings and travel, and required all workers who are not necessary to sustain or protect life to stay home.

The measures put in place by Executive Orders 2020-21 and 2020-42 have been effective: the number of new confirmed cases each day has started to drop. Although the virus remains aggressive and persistent—on April 23, 2020, Michigan reported 35,291 confirmed cases and 2,977 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We can now start the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. But in doing so, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone. Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-42, amend their scope, and extend their duration to May 15, 2020, unless modified earlier. With this order, Executive Order 2020-42 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.
3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention ("CDC"), including remaining at least six feet from people from outside the individual's household to the extent feasible under the circumstances.
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life, to conduct minimum basic operations, or to perform a resumed activity within the meaning of this order.
  - (a) For purposes of this order, workers who are necessary to sustain or protect life are defined as "critical infrastructure workers," as described in sections 8 and 9 of this order.

- (b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 11 of this order.

- (c) Workers who perform resumed activities are defined in section 10 of this order.

5. Businesses and operations that employ critical infrastructure workers or workers who perform resumed activities may continue in-person operations, subject to the following conditions:

- (a) Consistent with sections 8, 9, and 10 of this order, businesses and operations must determine which of their workers are critical infrastructure workers or workers who perform resumed activities and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work. Businesses and operations need not designate:
  - (1) Workers in health care and public health.
  - (2) Workers who perform necessary government activities, as described in section 6 of this order.
  - (3) Workers and volunteers described in section 9(d) of this order.
- (b) In-person activities that are not necessary to sustain or protect life or to perform a resumed activity must be suspended.
- (c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 11 of this order. Stores that are open for in-

person sales must also adhere to the rules described in section 12 of this order.

- (d) Any business or operation that employs workers who perform resumed activities under section 10(a) of this order, but that does not sell necessary supplies, may sell any goods through remote sales via delivery or at the curbside. Such a business or operation, however, must otherwise remain closed to the public.
6. All in-person government activities at whatever level (state, county, or local) that are not necessary to sustain or protect life, or to support those businesses and operations that are maintaining in-person activities under this order, are suspended.
- (a) For purposes of this order, necessary government activities include activities performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders.
  - (b) Such activities also include, but are not limited to, public transit, trash pick-up and disposal (including recycling and composting), activities necessary to manage and oversee elections, operations necessary to enable transactions that support the work of a business's or operation's critical infrastructure workers, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.
  - (c) For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.
  - (d) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 11 of this order.
7. Exceptions.
- (a) Individuals may leave their home or place of residence, and travel as necessary:
    - (1) To engage in outdoor recreational activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor recreational activity includes walking, hiking, running, cycling, boating, golfing, or other similar activity, as well as any comparable activity for those with limited mobility.
    - (2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)

- (3) To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.
- (4) To perform resumed activities, as described in section 10 of this order, after being designated to perform such work by their employers.
- (5) To perform necessary government activities, as described in section 6 of this order.
- (6) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including in-person procedures or veterinary services that, in accordance with a duly implemented non-essential procedure or veterinary services postponement plan, have not been postponed).
- (7) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their motor vehicles.
  - (A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences or motor vehicles.
  - (B) Individuals may also leave the home to pick up or return a motor vehicle as permitted under section 9(i) of this order, or to have a motor vehicle or bicycle repaired or maintained.
  - (C) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
- (8) To pick up non-necessary supplies at the curbside from a store that must otherwise remain closed to the public.
- (9) To care for a family member or a family member's pet in another household.
- (10) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.

- (11) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
  - (12) To visit a child in out-of-home care, or to facilitate a visit between a parent and a child in out-of-home care, when there is agreement between the child placing agency, the parent, and the caregiver about a safe visitation plan, or when, failing such agreement, the individual secures an exception from the executive director of the Children's Services Agency.
  - (13) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
  - (14) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
  - (15) To attend a funeral, provided that no more than 10 people are in attendance.
  - (16) To attend a meeting of an addiction recovery mutual aid society, provided that no more than 10 people are in attendance.
  - (b) Individuals may also travel:
    - (1) To return to a home or place of residence from outside this state.
    - (2) To leave this state for a home or residence elsewhere.
    - (3) Between two residences in this state, including moving to a new residence.
    - (4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.
  - (c) All other travel is prohibited, including all travel to vacation rentals.
8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). This order does *not* adopt any subsequent guidance document released by this same agency.



Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

- (a) Health care and public health.
- (b) Law enforcement, public safety, and first responders.
- (c) Food and agriculture.
- (d) Energy.
- (e) Water and wastewater.
- (f) Transportation and logistics.
- (g) Public works.
- (h) Communications and information technology, including news media.
- (i) Other community-based government operations and essential functions.
- (j) Critical manufacturing.
- (k) Hazardous materials.
- (l) Financial services.
- (m) Chemical supply chains and safety.
- (n) Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

- (a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of critical infrastructure workers, workers who conduct minimum basic operations, workers who perform necessary government activities, or workers who perform resumed activities. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.
- (b) Workers at suppliers, distribution centers, or service providers, as described below.
  - (1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided

that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

- (2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (3) Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
- (c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.
  - (d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
  - (e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
  - (f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences or motor vehicles, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
  - (g) Workers at laundromats, coin laundries, and dry cleaners.

- (h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
  - (i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.
10. For purposes of this order, workers who perform resumed activities are defined as follows:
- (a) Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
  - (b) Workers who perform bicycle maintenance or repair.
  - (c) Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations, subject to the enhanced social-distancing rules described in section 11(h) of this order.
  - (d) Maintenance workers and groundskeepers who are necessary to maintain the safety and sanitation of places of outdoor recreation not otherwise closed under Executive Order 2020-43 or any order that may follow from it, provided that the places and their workers do not provide goods, equipment, supplies, or services to individuals, and subject to the enhanced social-distancing rules described in section 11(h) of this order.
  - (e) Workers for moving or storage operations, subject to the enhanced social-distancing rules described in section 11(h) of this order.
11. Businesses, operations, and government agencies that remain open for in-person work must adhere to sound social distancing practices and measures, which include but are not limited to:
- (a) Developing a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available [here](#). Such plan must be available at company headquarters or the worksite.
  - (b) Restricting the number of workers present on premises to no more than is strictly necessary to perform the in-person work permitted under this order.
  - (c) Promoting remote work to the fullest extent possible.
  - (d) Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible.

- (e) Increasing standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
  - (f) Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
  - (g) Any other social distancing practices and mitigation measures recommended by the CDC.
  - (h) For businesses and operations whose in-person work is permitted under sections 10(c) through 10(e) of this order, the following additional measures must also be taken:
    - (1) Barring gatherings of any size in which people cannot maintain six feet of distance from one another.
    - (2) Limiting in-person interaction with clients and patrons to the maximum extent possible, and barring any such interaction in which people cannot maintain six feet of distance from one another.
    - (3) Providing personal protective equipment such as gloves, goggles, face shields, and face masks as appropriate for the activity being performed.
    - (4) Adopting protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning of tools, equipment, and frequently touched surfaces.
12. Any store that remains open for in-store sales under section 9(f) or section 10(c) of this order:
- (a) Must establish lines to regulate entry in accordance with subsection (b) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
  - (b) Must adhere to the following restrictions:
    - (1) For stores of less than 50,000 square feet of customer floor space, must limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.

- (2) For stores of more than 50,000 square feet, must:
    - (A) Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space.
    - (B) Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.
  - (3) The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in this subsection as necessary to protect the public health.
- (c) May continue to sell goods other than necessary supplies if the sale of such goods is in the ordinary course of business.
- (d) Must consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
- 13. No one shall rent a short-term vacation property except as necessary to assist in housing a health care professional aiding in the response to the COVID-19 pandemic or a volunteer who is aiding the same.
- 14. Michigan state parks remain open for day use, subject to any reductions in services and specific closures that, in the judgment of the director of the Department of Natural Resources, are necessary to minimize large gatherings and to prevent the spread of COVID-19.
- 15. Effective on April 26, 2020 at 11:59 pm:
  - (a) Any individual able to medically tolerate a face covering must wear a covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space.
  - (b) All businesses and operations whose workers perform in-person work must, at a minimum, provide non-medical grade face coverings to their workers.
  - (c) Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers who interact with the public.
  - (d) The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to persons who wear a mask under this order.

16. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, neither a place of religious worship nor its owner is subject to penalty under section 20 of this order for allowing religious worship at such place. No individual is subject to penalty under section 20 of this order for violating section 15(a) of this order.
17. 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.
18. This order takes effect immediately, unless otherwise specified in this order, and continues through May 15, 2020 at 11:59 pm. Executive Order 2020-42 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.
19. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.
20. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.



Date: April 24, 2020

Time: 11:00 am

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GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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SECRETARY OF STATE

# **EXHIBIT 9**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

## **EXECUTIVE ORDER**

**No. 2020-70**

**Temporary requirement to suspend activities that  
are not necessary to sustain or protect life**

**Rescission of Executive Order 2020-59**

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 Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared 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 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the weeks that followed, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on 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. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I 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.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations,



and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To suppress the spread of COVID-19, to prevent the state’s health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, to establish the public health infrastructure necessary to contain the spread of infection, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. In Executive Orders 2020-42 and 2020-59, I extended that initial order, modifying its scope as needed and appropriate to match the ever-changing circumstances presented by this pandemic.

The measures put in place by Executive Orders 2020-21, 2020-42, and 2020-59 have been effective: the number of new confirmed cases each day has started to drop. Although the virus remains aggressive and persistent—on April 30, 2020, Michigan reported 41,379 confirmed cases and 3,789 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We can now start the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-59 and amend their scope. With Executive Order 2020-59, I ordered that certain previously suspended work and activities could resume, based on an evaluation of public health metrics and an assessment of the statewide risks and benefits. That evaluation remains ongoing, and based upon it, I find that we will soon be positioned to allow another segment of previously suspended work to resume. This work is permitted to resume on May 7, 2020, and includes construction, real-estate activities, and work that is traditionally and primarily performed outdoors. This work, like the resumed activities allowed under Executive Order 2020-59, will be subject to stringent precautionary measures. This partial and incremental reopening will allow my public health team to evaluate the effects of allowing these activities to resume, to assess the capacity of the health care system to respond adequately to any increases in infections, and to prepare for any increase in patients presenting to a health-care facility or provider. With this order, Executive Order 2020-59 is rescinded. This order will remain in effect until May 15, 2020.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any

number of people occurring among persons not part of a single household are prohibited.

3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention (“CDC”), including remaining at least six feet from people from outside the individual’s household to the extent feasible under the circumstances.
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life, to conduct minimum basic operations, or to perform a resumed activity within the meaning of this order.
  - (a) For purposes of this order, workers who are necessary to sustain or protect life are defined as “critical infrastructure workers,” as described in sections 8 and 9 of this order.
  - (b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 11 of this order.

- (c) Workers who perform resumed activities are defined in section 10 of this order.
5. Businesses and operations that employ critical infrastructure workers or workers who perform resumed activities may continue in-person operations, subject to the following conditions:
  - (a) Consistent with sections 8, 9, and 10 of this order, businesses and operations must determine which of their workers are critical infrastructure workers or workers who perform resumed activities and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave

the home or place of residence for work. Businesses and operations need not designate:

- (1) Workers in health care and public health.
  - (2) Workers who perform necessary government activities, as described in section 6 of this order.
  - (3) Workers and volunteers described in section 9(d) of this order.
- (b) In-person activities that are not necessary to sustain or protect life or to perform a resumed activity must be suspended.
  - (c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 11 of this order. Stores that are open for in-person sales must also adhere to the rules described in section 12 of this order.
  - (d) Any business or operation that employs workers who perform resumed activities under section 10(a) of this order, but that does not sell necessary supplies, may sell any goods through remote sales via delivery or at the curbside. Such a business or operation, however, must otherwise remain closed to the public.
6. All in-person government activities at whatever level (state, county, or local) are suspended unless:
- (a) They are performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders, as defined in sections 8 and 9 of this order.
  - (b) They are performed by workers who are permitted to resume work under section 10 of this order.
  - (c) They are necessary to support the activities of workers described in sections 8, 9, and 10 of this order, or to enable transactions that support businesses or operations that employ such workers.
  - (d) They involve public transit, trash pick-up and disposal (including recycling and composting), the management and oversight of elections, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.
  - (e) For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.

- (f) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 11 of this order.

7. Exceptions.

- (a) Individuals may leave their home or place of residence, and travel as necessary:
  - (1) To engage in outdoor recreational activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor recreational activity includes walking, hiking, running, cycling, boating, golfing, or other similar activity, as well as any comparable activity for those with limited mobility.
  - (2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)
  - (3) To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.
  - (4) To perform resumed activities, as described in section 10 of this order, after being designated to perform such work by their employers.
  - (5) To perform necessary government activities, as described in section 6 of this order.
  - (6) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including in-person procedures or veterinary services that, in accordance with a duly implemented non-essential procedure or veterinary services postponement plan, have not been postponed).
  - (7) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their motor vehicles.
    - (A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the

safety, sanitation, and basic operation of their residences or motor vehicles.

- (B) Individuals may also leave the home to pick up or return a motor vehicle as permitted under section 9(i) of this order, or to have a motor vehicle or bicycle repaired or maintained.
  - (C) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
- (8) To pick up non-necessary supplies at the curbside from a store that must otherwise remain closed to the public.
  - (9) To care for a family member or a family member's pet in another household.
  - (10) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
  - (11) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
  - (12) To visit a child in out-of-home care, or to facilitate a visit between a parent and a child in out-of-home care, when there is agreement between the child placing agency, the parent, and the caregiver about a safe visitation plan, or when, failing such agreement, the individual secures an exception from the executive director of the Children's Services Agency.
  - (13) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
  - (14) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
  - (15) To attend a funeral, provided that no more than 10 people are in attendance.
  - (16) To attend a meeting of an addiction recovery mutual aid society, provided that no more than 10 people are in attendance.
  - (17) To view a real-estate listing by appointment, as permitted under section 10(h) of this order.

- (b) Individuals may also travel:
    - (1) To return to a home or place of residence from outside this state.
    - (2) To leave this state for a home or residence elsewhere.
    - (3) Between two residences in this state, including moving to a new residence.
    - (4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.
  - (c) All other travel is prohibited, including all travel to vacation rentals.
8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). This order does *not* adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

- (a) Health care and public health.
- (b) Law enforcement, public safety, and first responders.
- (c) Food and agriculture.
- (d) Energy.
- (e) Water and wastewater.
- (f) Transportation and logistics.
- (g) Public works.
- (h) Communications and information technology, including news media.
- (i) Other community-based government operations and essential functions.
- (j) Critical manufacturing.
- (k) Hazardous materials.
- (l) Financial services.
- (m) Chemical supply chains and safety.

(n) Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

- (a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of critical infrastructure workers, workers who conduct minimum basic operations, workers who perform necessary government activities, or workers who perform resumed activities. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.
- (b) Workers at suppliers, distribution centers, or service providers, as described below.
  - (1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (3) Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
- (c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.
- (d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy



individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

- (e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
  - (f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences or motor vehicles, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
  - (g) Workers at laundromats, coin laundries, and dry cleaners.
  - (h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
  - (i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.
10. For purposes of this order, workers who perform resumed activities are defined as follows:
- (a) Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
  - (b) Workers who perform bicycle maintenance or repair.
  - (c) Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations, subject to the enhanced social-distancing rules described in section 11(h) of this order.
  - (d) Maintenance workers and groundskeepers who are necessary to maintain the safety and sanitation of places of outdoor recreation not otherwise closed under Executive Order 2020-69 or any order that may follow from it, provided that the places and their workers do not provide goods, equipment, supplies, or services to individuals, and subject to the enhanced social-distancing rules described in section 11(h) of this order.
  - (e) Workers for moving or storage operations, subject to the enhanced social-distancing rules described in section 11(h) of this order.
  - (f) Effective at 12:01 am on May 7, 2020, and subject to the enhanced social-distancing rules described in section 11(h) of this order, workers who perform



work that is traditionally and primarily performed outdoors, including but not limited to forestry workers, outdoor power equipment technicians, parking enforcement workers, and similar workers.

- (g) Effective at 12:01 am on May 7, 2020, workers in the construction industry, including workers in the building trades (plumbers, electricians, HVAC technicians, and similar workers), subject to the enhanced social-distancing rules described in section 11(i) of this order.
  - (h) Effective at 12:01 am on May 7, 2020, workers in the real-estate industry, including agents, appraisers, brokers, inspectors, surveyors, and registers of deeds, provided that:
    - (1) Any showings, inspections, appraisals, photography or videography, or final walk-throughs must be performed by appointment and must be limited to no more than four people on the premises at any one time. No in-person open houses are permitted.
    - (2) Private showings may only be arranged for owner-occupied homes, vacant homes, vacant land, commercial property, and industrial property.
  - (i) Effective at 12:01 am on May 7, 2020, workers necessary to the manufacture of goods that support workplace modification to forestall the spread of COVID-19 infections.
11. Businesses, operations, and government agencies that remain open for in-person work must, at a minimum:
- (a) Develop a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available [here](#). Such plan must be available at company headquarters or the worksite.
  - (b) Restrict the number of workers present on premises to no more than is strictly necessary to perform the in-person work permitted under this order.
  - (c) Promote remote work to the fullest extent possible.
  - (d) Keep workers and patrons who are on premises at least six feet from one another to the maximum extent possible.
  - (e) Increase standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.

- (f) Adopt policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
- (g) Adopt any other social distancing practices and mitigation measures recommended by the CDC.
- (h) Businesses or operations whose in-person work is permitted under sections 10(c) through 10(f) of this order must also:
  - (1) Prohibit gatherings of any size in which people cannot maintain six feet of distance from one another.
  - (2) Limit in-person interaction with clients and patrons to the maximum extent possible, and barring any such interaction in which people cannot maintain six feet of distance from one another.
  - (3) Provide personal protective equipment such as gloves, goggles, face shields, and face masks as appropriate for the activity being performed.
  - (4) Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning of tools, equipment, and frequently touched surfaces.
- (i) Businesses or operations in the construction industry must also:
  - (1) Adhere to all of the provisions in subsection (h) of this section.
  - (2) Designate a site-specific supervisor to monitor and oversee the implementation of COVID-19 control strategies developed under subsection (a) of this section. The supervisor must remain on-site at all times during activities. An on-site worker may be designated to perform the supervisory role.
  - (3) Conduct a daily entry screening protocol for workers and visitors entering the worksite, including a questionnaire covering symptoms and exposure to people with possible COVID-19, together with, if possible, a temperature screening.
  - (4) Create dedicated entry point(s) at every worksite, if possible, for daily screening as provided in subprovision (3) of this subsection, or in the alternative issue stickers or other indicators to workers to show that they received a screening before entering the worksite that day.
  - (5) Require face shields or masks to be worn when workers cannot consistently maintain six feet of separation from other workers.

- (6) Provide instructions for the distribution of personal protective equipment and designate on-site locations for soiled masks.
  - (7) Encourage or require the use of work gloves, as appropriate, to prevent skin contact with contaminated surfaces.
  - (8) Identify choke points and high-risk areas where workers must stand near one another (such as hallways, hoists and elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained.
  - (9) Ensure there are sufficient hand-washing or hand-sanitizing stations at the worksite to enable easy access by workers.
  - (10) Notify contractors (if a subcontractor) or owners (if a contractor) of any confirmed COVID-19 cases among workers at the worksite.
  - (11) Restrict unnecessary movement between project sites.
  - (12) Create protocols for minimizing personal contact upon delivery of materials to the worksite.
12. Any store that remains open for in-store sales under section 9(f) or section 10(c) of this order:
  - (a) Must establish lines to regulate entry in accordance with subsection (b) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
  - (b) Must adhere to the following restrictions:
    - (1) For stores of less than 50,000 square feet of customer floor space, must limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.
    - (2) For stores of more than 50,000 square feet, must:
      - (A) Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space.
      - (B) Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.

- (3) The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in this subsection as necessary to protect the public health.
- (c) May continue to sell goods other than necessary supplies if the sale of such goods is in the ordinary course of business.
  - (d) Must consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
- 13. No one shall rent a short-term vacation property except as necessary to assist in housing a health care professional aiding in the response to the COVID-19 pandemic or a volunteer who is aiding the same.
- 14. Michigan state parks remain open for day use, subject to any reductions in services and specific closures that, in the judgment of the director of the Department of Natural Resources, are necessary to minimize large gatherings and to prevent the spread of COVID-19.
- 15. Rules governing face coverings.
  - (a) Any individual able to medically tolerate a face covering must wear a covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space.
  - (b) All businesses and operations whose workers perform in-person work must, at a minimum, provide non-medical grade face coverings to their workers.
  - (c) Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers who interact with the public.
  - (d) The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.
- 16. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, neither a place of religious worship nor its owner is subject to penalty under section 20 of this order for allowing religious worship at such place. No individual is subject to penalty under section 20 of this order for violating section 15(a) of this order.

17. 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.
18. This order takes effect immediately, unless otherwise specified in this order, and continues through May 15, 2020 at 11:59 pm. Executive Order 2020-59 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.
19. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.
20. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.

Date: May 1, 2020

Time: 2:49 pm



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GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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SECRETARY OF STATE

# **EXHIBIT 10**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

## **EXECUTIVE ORDER**

**No. 2020-77**

**Temporary requirement to suspend certain activities that  
are not necessary to sustain or protect life**

**Rescission of Executive Order 2020-70**

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 Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared 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 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on 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. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I 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.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations,

and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To suppress the spread of COVID-19, to prevent the state’s health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, to establish the public health infrastructure necessary to contain the spread of infection, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. In Executive Orders 2020-42, 2020-59, and 2020-70, I extended that initial order, modifying its scope as needed and appropriate to match the ever-changing circumstances presented by this pandemic.

The measures put in place by Executive Orders 2020-21, 2020-42, 2020-59, and 2020-70 have been effective: the number of new confirmed cases each day has started to drop. Although the virus remains aggressive and persistent—on May 6, 2020, Michigan reported 45,054 confirmed cases and 4,250 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We can now start the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-70 and amend their scope. With Executive Order 2020-70, I ordered that certain previously suspended work and activities could resume, based on an evaluation of public health metrics and an assessment of the statewide risks and benefits. That evaluation remains ongoing, and based upon it, I find that we will soon be positioned to allow another segment of previously suspended work to resume: manufacturing work. This work, like the resumed activities allowed under Executive Order 2020-70, will be subject to stringent precautionary measures. This partial and incremental reopening will allow my public health team to evaluate the effects of allowing these activities to resume, to assess the capacity of the health care system to respond adequately to any increases in infections, and to prepare for any increase in patients presenting to a health-care facility or provider. With this order, Executive Order 2020-70 is rescinded. This order will remain in effect until May 28, 2020.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any



number of people occurring among persons not part of a single household are prohibited.

3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention (“CDC”), including remaining at least six feet from people from outside the individual’s household to the extent feasible under the circumstances.
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life, to conduct minimum basic operations, or to perform a resumed activity within the meaning of this order.
  - (a) For purposes of this order, workers who are necessary to sustain or protect life are defined as “critical infrastructure workers,” as described in sections 8 and 9 of this order.
  - (b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 11 of this order.

- (c) Workers who perform resumed activities are defined in section 10 of this order.
5. Businesses and operations that employ critical infrastructure workers or workers who perform resumed activities may continue in-person operations, subject to the following conditions:
  - (a) Consistent with sections 8, 9, and 10 of this order, businesses and operations must determine which of their workers are critical infrastructure workers or workers who perform resumed activities and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave

the home or place of residence for work. Businesses and operations need not designate:

- (1) Workers in health care and public health.
    - (2) Workers who perform necessary government activities, as described in section 6 of this order.
    - (3) Workers and volunteers described in section 9(d) of this order.
  - (b) In-person activities that are not necessary to sustain or protect life or to perform a resumed activity must be suspended.
  - (c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 11 of this order. Stores that are open for in-person sales must also adhere to the rules described in section 12 of this order.
  - (d) Any business or operation that employs workers who perform resumed activities under section 10(a) of this order, but that does not sell necessary supplies, may sell any goods through remote sales via delivery or at the curbside. Such a business or operation, however, must otherwise remain closed to the public.
6. All in-person government activities at whatever level (state, county, or local) are suspended unless:
- (a) They are performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders, as defined in sections 8 and 9 of this order.
  - (b) They are performed by workers who are permitted to resume work under section 10 of this order.
  - (c) They are necessary to support the activities of workers described in sections 8, 9, and 10 of this order, or to enable transactions that support businesses or operations that employ such workers.
  - (d) They involve public transit, trash pick-up and disposal (including recycling and composting), the management and oversight of elections, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.
  - (e) For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.

- (f) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 11 of this order.

7. Exceptions.

- (a) Individuals may leave their home or place of residence, and travel as necessary:
  - (1) To engage in outdoor recreational activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor recreational activity includes walking, hiking, running, cycling, boating, golfing, or other similar activity, as well as any comparable activity for those with limited mobility.
  - (2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)
  - (3) To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.
  - (4) To perform resumed activities, as described in section 10 of this order, after being designated to perform such work by their employers.
  - (5) To perform necessary government activities, as described in section 6 of this order.
  - (6) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including in-person procedures or veterinary services that, in accordance with a duly implemented non-essential procedure or veterinary services postponement plan, have not been postponed).
  - (7) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their motor vehicles.
    - (A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the

safety, sanitation, and basic operation of their residences or motor vehicles.

- (B) Individuals may also leave the home to pick up or return a motor vehicle as permitted under section 9(i) of this order, or to have a motor vehicle or bicycle repaired or maintained.
  - (C) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
- (8) To pick up non-necessary supplies at the curbside from a store that must otherwise remain closed to the public.
  - (9) To care for a family member or a family member's pet in another household.
  - (10) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
  - (11) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
  - (12) To visit a child in out-of-home care, or to facilitate a visit between a parent and a child in out-of-home care, when there is agreement between the child placing agency, the parent, and the caregiver about a safe visitation plan, or when, failing such agreement, the individual secures an exception from the executive director of the Children's Services Agency.
  - (13) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
  - (14) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
  - (15) To attend a funeral, provided that no more than 10 people are in attendance.
  - (16) To attend a meeting of an addiction recovery mutual aid society, provided that no more than 10 people are in attendance.
  - (17) To view a real-estate listing by appointment, as permitted under section 10(g) of this order.

- (18) To participate in training, credentialing, or licensing activities permitted under section 10(i) of this order.
  - (b) Individuals may also travel:
    - (1) To return to a home or place of residence from outside this state.
    - (2) To leave this state for a home or residence elsewhere.
    - (3) Between two residences in this state, including moving to a new residence.
    - (4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.
  - (c) All other travel is prohibited, including all travel to vacation rentals.
8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). This order does *not* adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

- (a) Health care and public health.
- (b) Law enforcement, public safety, and first responders.
- (c) Food and agriculture.
- (d) Energy.
- (e) Water and wastewater.
- (f) Transportation and logistics.
- (g) Public works.
- (h) Communications and information technology, including news media.
- (i) Other community-based government operations and essential functions.
- (j) Critical manufacturing.
- (k) Hazardous materials.
- (l) Financial services.

- (m) Chemical supply chains and safety.
  - (n) Defense industrial base.
9. For purposes of this order, critical infrastructure workers also include:
- (a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of critical infrastructure workers, workers who conduct minimum basic operations, workers who perform necessary government activities, or workers who perform resumed activities. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.
  - (b) Workers at suppliers, distribution centers, or service providers, as described below.
    - (1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
    - (2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
    - (3) Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
    - (4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
  - (c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.

- (d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
  - (e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
  - (f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences or motor vehicles, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
  - (g) Workers at laundromats, coin laundries, and dry cleaners.
  - (h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
  - (i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.
10. For purposes of this order, workers who perform resumed activities are defined as follows:
- (a) Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
  - (b) Workers who perform bicycle maintenance or repair.
  - (c) Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations, subject to the enhanced social-distancing rules described in section 11(i) of this order.
  - (d) Workers for moving or storage operations, subject to the enhanced social-distancing rules described in section 11(i) of this order.
  - (e) Subject to the enhanced social-distancing rules described in section 11(i) of this order, workers who perform work that is traditionally and primarily performed outdoors, including but not limited to forestry workers, outdoor power equipment technicians, parking enforcement workers, and outdoor workers at places of outdoor recreation not otherwise closed under Executive Order 2020-69 or any order that may follow from it.

- (f) Workers in the construction industry, including workers in the building trades (plumbers, electricians, HVAC technicians, and similar workers), subject to the workplace safeguards described in section 11(j) of this order.
- (g) Workers in the real-estate industry, including agents, appraisers, brokers, inspectors, surveyors, and registers of deeds, provided that:
  - (1) Any showings, inspections, appraisals, photography or videography, or final walk-throughs must be performed by appointment and must be limited to no more than four people on the premises at any one time. No in-person open houses are permitted.
  - (2) Private showings may only be arranged for owner-occupied homes, vacant homes, vacant land, commercial property, and industrial property.
- (h) Workers necessary to the manufacture of goods that support workplace modification to forestall the spread of COVID-19 infections.
- (i) Workers necessary to train, credential, and license first responders (e.g., police officers, fire fighters, paramedics) and health-care workers, including certified nursing assistants, provided that as much instruction as possible is provided remotely.
- (j) Workers necessary to perform start-up activities at manufacturing facilities, including activities necessary to prepare the facilities to follow the workplace safeguards described in section 11(k) of this order.
- (k) Effective at 12:01 am on May 11, 2020, workers necessary to perform manufacturing activities, subject to the workplace safeguards described in section 11(k) of this order. Manufacturing work may not commence under this subsection until the facility at which the work will be performed has been prepared to follow the workplace safeguards described in section 11(k) of this order.
- (l) Consistent with section 9(b) of this order, workers at suppliers, distribution centers, or service providers whose in-person presence is necessary to enable, support, or facilitate another business's or operation's resumed activities, including workers at suppliers, distribution centers, or service providers along the supply chain whose in-person presence is necessary enable, support, or facilitate the necessary work of another supplier, distribution center, or service provider in enabling, supporting, or facilitating another business's or operation's resumed activities. Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.



11. Businesses, operations, and government agencies that remain open for in-person work must, at a minimum:
  - (a) Develop a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available [here](#). Such plan must be available at company headquarters or the worksite.
  - (b) Restrict the number of workers present on premises to no more than is strictly necessary to perform the in-person work permitted under this order.
  - (c) Promote remote work to the fullest extent possible.
  - (d) Keep workers and patrons who are on premises at least six feet from one another to the maximum extent possible.
  - (e) Require masks to be worn when workers cannot consistently maintain six feet of separation from other individuals in the workplace, and consider face shields when workers cannot consistently maintain three feet of separation from other individuals in the workplace.
  - (f) Increase standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
  - (g) Adopt policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
  - (h) Adopt any other social distancing practices and mitigation measures recommended by the CDC.
  - (i) Businesses or operations whose in-person work is permitted under sections 10(c) through 10(e) of this order must also:
    - (1) Prohibit gatherings of any size in which people cannot maintain six feet of distance from one another.
    - (2) Limit in-person interaction with clients and patrons to the maximum extent possible, and bar any such interaction in which people cannot maintain six feet of distance from one another.
    - (3) Provide personal protective equipment such as gloves, goggles, face shields, and face masks as appropriate for the activity being performed.
    - (4) Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough

cleaning and disinfection of tools, equipment, and frequently touched surfaces.

- (j) Businesses or operations in the construction industry must also:
- (1) Adhere to all of the provisions in subsection (i) of this section.
  - (2) Designate a site-specific supervisor to monitor and oversee the implementation of COVID-19 control strategies developed under subsection (a) of this section. The supervisor must remain on-site at all times during activities. An on-site worker may be designated to perform the supervisory role.
  - (3) Conduct a daily entry screening protocol for workers, contractors, suppliers, and any other individuals entering a worksite, including a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19, together with, if possible, a temperature screening.
  - (4) Create dedicated entry point(s) at every worksite, if possible, for daily screening as provided in subprovision (3) of this subsection, or in the alternative issue stickers or other indicators to workers to show that they received a screening before entering the worksite that day.
  - (5) Provide instructions for the distribution of personal protective equipment and designate on-site locations for soiled masks.
  - (6) Encourage or require the use of work gloves, as appropriate, to prevent skin contact with contaminated surfaces.
  - (7) Identify choke points and high-risk areas where workers must stand near one another (such as hallways, hoists and elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained.
  - (8) Ensure there are sufficient hand-washing or hand-sanitizing stations at the worksite to enable easy access by workers.
  - (9) Notify contractors (if a subcontractor) or owners (if a contractor) of any confirmed COVID-19 cases among workers at the worksite.
  - (10) Restrict unnecessary movement between project sites.
  - (11) Create protocols for minimizing personal contact upon delivery of materials to the worksite.

- (k) Manufacturing facilities must also:
- (1) Conduct a daily entry screening protocol for workers, contractors, suppliers, and any other individuals entering the facility, including a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19, together with temperature screening as soon as no-touch thermometers can be obtained.
  - (2) Create dedicated entry point(s) at every facility for daily screening as provided in subprovision (1) of this subsection, and ensure physical barriers are in place to prevent anyone from bypassing the screening.
  - (3) Suspend all non-essential in-person visits, including tours.
  - (4) Train workers on, at a minimum:
    - (A) Routes by which the virus causing COVID-19 is transmitted from person to person.
    - (B) Distance that the virus can travel in the air, as well as the time it remains viable in the air and on environmental surfaces.
    - (C) Symptoms of COVID-19.
    - (D) Steps the worker must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19.
    - (E) Measures that the facility is taking to prevent worker exposure to the virus, as described in the COVID-19 preparedness and response plan required under section 11(a) of this order.
    - (F) Rules that the worker must follow in order to prevent exposure to and spread of the virus.
    - (G) The use of personal protective equipment, including the proper steps for putting it on and taking it off.
  - (5) Reduce congestion in common spaces wherever practicable by, for example, closing salad bars and buffets within cafeterias and kitchens, requiring individuals to sit at least six feet from one another, placing markings on the floor to allow social distancing while standing in line, offering boxed food via delivery or pick-up points, and reducing cash payments.
  - (6) Implement rotational shift schedules where possible (e.g., increasing the number of shifts, alternating days or weeks) to reduce the number of workers in the facility at the same time.

- (7) Stagger start times and meal times.
  - (8) Install temporary physical barriers, where practicable, between work stations and cafeteria tables.
  - (9) Create protocols for minimizing personal contact upon delivery of materials to the facility.
  - (10) Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible.
  - (11) Frequently and thoroughly clean and disinfect high-touch surfaces, paying special attention to parts, products, and shared equipment (e.g., tools, machinery, vehicles).
  - (12) Ensure there are sufficient hand-washing or hand-sanitizing stations at the worksite to enable easy access by workers, and discontinue use of hand dryers.
  - (13) Notify plant leaders and potentially exposed individuals upon identification of a positive case of COVID-19 in the facility, as well as maintain a central log for symptomatic workers or workers who received a positive test for COVID-19.
  - (14) Send potentially exposed individuals home upon identification of a positive case of COVID-19 in the facility.
  - (15) Encourage workers to self-report to plant leaders as soon as possible after developing symptoms of COVID-19.
  - (16) Shut areas of the manufacturing facility for cleaning and disinfection, as necessary, if a worker goes home because he or she is displaying symptoms of COVID-19.
12. Any store that remains open for in-store sales under section 9(f) or section 10(c) of this order:
- (a) Must establish lines to regulate entry in accordance with subsection (b) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
  - (b) Must adhere to the following restrictions:
    - (1) For stores of less than 50,000 square feet of customer floor space, must limit the number of people in the store (including employees) to 25% of

the total occupancy limits established by the State Fire Marshal or a local fire marshal.

- (2) For stores of more than 50,000 square feet, must:
  - (A) Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space.
  - (B) Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.
- (3) The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in this subsection as necessary to protect the public health.
- (c) May continue to sell goods other than necessary supplies if the sale of such goods is in the ordinary course of business.
- (d) Must consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
- 13. No one shall rent a short-term vacation property except as necessary to assist in housing a health care professional aiding in the response to the COVID-19 pandemic or a volunteer who is aiding the same.
- 14. Michigan state parks remain open for day use, subject to any reductions in services and specific closures that, in the judgment of the director of the Department of Natural Resources, are necessary to minimize large gatherings and to prevent the spread of COVID-19.
- 15. Rules governing face coverings.
  - (a) Except as provided in subsection (b) of this section, any individual able to medically tolerate a face covering must wear a covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space.
  - (b) An individual may be required to temporarily remove a face covering upon entering an enclosed public space for identification purposes.
  - (c) All businesses and operations whose workers perform in-person work must, at a minimum, provide non-medical grade face coverings to their workers.
  - (d) Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire

fighters, paramedics), and other critical workers who interact with the public.

- (e) The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.
- 16. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, neither a place of religious worship nor its owner is subject to penalty under section 20 of this order for allowing religious worship at such place. No individual is subject to penalty under section 20 of this order for engaging in or traveling to engage in religious worship at a place of religious worship, or for violating section 15(a) of this order.
- 17. 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. Similarly, nothing in this order shall be taken to abridge protections guaranteed by the state or federal constitution under these emergency circumstances.
- 18. This order takes effect immediately, unless otherwise specified in this order, and continues through May 28, 2020 at 11:59 pm. Executive Order 2020-70 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.
- 19. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.
- 20. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.

Date: May 7, 2020

Time: 3:00 pm



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GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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SECRETARY OF STATE

# **EXHIBIT 11**



U.S. Department of Homeland Security  
Cybersecurity & Infrastructure Security Agency  
Office of the Director  
Washington, DC 20528



**CISA**  
CYBER+INFRASTRUCTURE

March 19, 2020

**MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL  
INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE**

FROM: Christopher C. Krebs  
Director  
Cybersecurity and Infrastructure Security Agency (CISA)

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As the Nation comes together to slow the spread of COVID-19, on March 16<sup>th</sup>, the President issued updated Coronavirus Guidance for America. This guidance states that:

*"If you work in a critical infrastructure industry, as defined by the Department of Homeland Security, such as healthcare services and pharmaceutical and food supply, you have a special responsibility to maintain your normal work schedule."*

The Cybersecurity and Infrastructure Security Agency (CISA) executes the Secretary of Homeland Security's responsibilities as assigned under the Homeland Security Act of 2002 to provide strategic guidance, promote a national unity of effort, and coordinate the overall federal effort to ensure the security and resilience of the Nation's critical infrastructure. CISA uses trusted partnerships with both the public and private sectors to deliver infrastructure resilience assistance and guidance to a broad range of partners.

In accordance with this mandate, and in collaboration with other federal agencies and the private sector, CISA developed an initial list of "Essential Critical Infrastructure Workers" to help State and local officials as they work to protect their communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. The list can also inform critical infrastructure community decision-making to determine the sectors, sub-sectors, segments, or critical functions that should continue normal operations, appropriately modified to account for Centers for Disease Control (CDC) workforce and customer protection guidance.

The attached list identifies workers who conduct a range of operations and services that are essential to continued critical infrastructure viability, including staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing management functions, among others. The industries they support represent, but are not necessarily limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement, and public works.

We recognize that State, local, tribal, and territorial governments are ultimately in charge of implementing and executing response activities in communities under their jurisdiction, while the Federal Government is in a supporting role. As State and local communities consider COVID-19-related restrictions, CISA is offering this list to assist prioritizing activities related to continuity of operations and incident response, including the appropriate movement of critical infrastructure workers within and between jurisdictions.

**Accordingly, this list is advisory in nature. It is not, nor should it be considered to be, a federal directive or standard in and of itself.**

In addition, these identified sectors and workers are not intended to be the authoritative or exhaustive list of critical infrastructure sectors and functions that should continue during the COVID-19 response. Instead, State and local officials should use their own judgment in using their authorities and issuing implementation directives and guidance. Similarly, critical infrastructure industry partners will use their own judgment, informed by this list, to ensure continued operations of critical infrastructure services and functions. All decisions should appropriately balance public safety while ensuring the continued delivery of critical infrastructure services and functions.

CISA will continue to work with you and our partners in the critical infrastructure community to update this list as the Nation's response to COVID-19 evolves. We also encourage you to submit how you might use this list so that we can develop a repository of use cases for broad sharing across the country.

Should you have questions about this list, please contact CISA at [CISA.CAT@cisa.dhs.gov](mailto:CISA.CAT@cisa.dhs.gov).

**Attachment:** "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response"

**CISA**  
CYBER+INFRASTRUCTURE

DEFEND TODAY, SECURE TOMORROW

# Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response

Version 1.0 (March 19, 2020)

## THE IMPORTANCE OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

Functioning critical infrastructure is imperative during the response to the COVID-19 emergency for both public health and safety as well as community well-being. Certain critical infrastructure industries have a special responsibility in these times to continue operations.

This guidance and accompanying list are intended to support State, Local, and industry partners in identifying the critical infrastructure sectors and the essential workers needed to maintain the services and functions Americans depend on daily and that need to be able to operate resiliently during the COVID-19 pandemic response.

This document gives guidance to State, local, tribal, and territorial jurisdictions and the private sector on defining essential critical infrastructure workers. Promoting the ability of such workers to continue to work during periods of community restriction, access management, social distancing, or closure orders/directives is crucial to community resilience and continuity of essential functions.

## CONSIDERATIONS FOR GOVERNMENT AND BUSINESS

This list was developed in consultation with federal agency partners, industry experts, and State and local officials, and is based on several key principles:

1. Response efforts to the COVID-19 pandemic are locally executed, State managed, and federally supported
2. Everyone should follow guidance from the CDC, as well as State and local government officials, regarding strategies to limit disease spread.
3. Workers should be encouraged to work remotely when possible and focus on core business activities. In-person, non-mandatory activities should be delayed until the resumption of normal operations.
4. When continuous remote work is not possible, businesses should enlist strategies to reduce the likelihood of spreading the disease. This includes, but is not necessarily limited to, separating staff by off-setting shift hours or days and/or social distancing. These steps can preserve the workforce and allow operations to continue.

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5. All organizations should implement their business continuity and pandemic plans, or put plans in place if they do not exist. Delaying implementation is not advised and puts at risk the viability of the business and the health and safety of the employees.
6. In the modern economy, reliance on technology and just-in-time supply chains means that certain workers must be able to access certain sites, facilities, and assets to ensure continuity of functions.
7. Government employees, such as emergency managers, and the business community need to establish and maintain lines of communication.
8. When government and businesses engage in discussions about critical infrastructure workers, they need to consider the implications of business operations beyond the jurisdiction where the asset or facility is located. Businesses can have sizeable economic and societal impacts as well as supply chain dependencies that are geographically distributed.
9. Whenever possible, jurisdictions should align access and movement control policies related to critical infrastructure workers to lower the burden of workers crossing jurisdictional boundaries.

## IDENTIFYING ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

The following list of sectors and identified essential critical infrastructure workers are an initial recommended set and are intended to be overly inclusive reflecting the diversity of industries across the United States. CISA will continually solicit and accept feedback on the list (both sectors/sub sectors and identified essential workers) and will evolve the list in response to stakeholder feedback. We will also use our various stakeholder engagement mechanisms to work with partners on how they are using this list and share those lessons learned and best practices broadly. We ask that you share your feedback, both positive and negative on this list so we can provide the most useful guidance to our critical infrastructure partners. **Feedback can be sent to [CISA.CAT@CISA.DHS.GOV](mailto:CISA.CAT@CISA.DHS.GOV).**



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## HEALTHCARE / PUBLIC HEALTH

- Workers providing COVID-19 testing; Workers that perform critical clinical research needed for COVID-19 response
- Caregivers (e.g., physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, speech pathologists and diagnostic and therapeutic technicians and technologists)
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.)
- Workers in other medical facilities (including Ambulatory Health and Surgical, Blood Banks, Clinics, Community Mental Health, Comprehensive Outpatient rehabilitation, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Long Term Care, Organ Pharmacies, Procurement Organizations, Psychiatric Residential, Rural Health Clinics and Federally Qualified Health Centers)
- Manufacturers, technicians, logistics and warehouse operators, and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products
- Public health / community health workers, including those who compile, model, analyze and communicate public health information
- Blood and plasma donors and the employees of the organizations that operate and manage related activities
- Workers that manage health plans, billing, and health information, who cannot practically work remotely
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely
- Workers performing cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely
- Workers conducting research critical to COVID-19 response
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely
- Workers who support food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, such as those residing in shelters
- Pharmacy employees necessary for filling prescriptions
- Workers performing mortuary services, including funeral homes, crematoriums, and cemetery workers
- Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to mental/behavioral health services to the family members, responders, and survivors of an incident

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## **LAW ENFORCEMENT, PUBLIC SAFETY, FIRST RESPONDERS**

- Personnel in emergency management, law enforcement, Emergency Management Systems, fire, and corrections, including front line and management
- Emergency Medical Technicians
- 911 call center employees
- Fusion Center employees
- Hazardous material responders from government and the private sector.
- Workers – including contracted vendors – who maintain digital systems infrastructure supporting law enforcement and emergency service operations.

## **FOOD AND AGRICULTURE**

- Workers supporting groceries, pharmacies and other retail that sells food and beverage products
- Restaurant carry-out and quick serve food operations - Carry-out and delivery food employees
- Food manufacturer employees and their supplier employees—to include those employed in food processing (packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Employees and firms supporting food, feed, and beverage distribution, including warehouse workers, vendor-managed inventory controllers and blockchain managers
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Company cafeterias - in-plant cafeterias used to feed employees
- Workers in food testing labs in private industries and in institutions of higher education
- Workers essential for assistance programs and government payments
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products
- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

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## ENERGY

### Electricity industry:

- Workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power, including call centers, utility workers, reliability engineers and fleet maintenance technicians
- Workers needed for safe and secure operations at nuclear generation
- Workers at generation, transmission, and electric blackstart facilities
- Workers at Reliability Coordinator (RC), Balancing Authorities (BA), and primary and backup Control Centers (CC), including but not limited to independent system operators, regional transmission organizations, and balancing authorities
- Mutual assistance personnel
- IT and OT technology staff – for EMS (Energy Management Systems) and Supervisory Control and Data Acquisition (SCADA) systems, and utility data centers; Cybersecurity engineers; cybersecurity risk management
- Vegetation management crews and traffic workers who support
- Environmental remediation/monitoring technicians
- Instrumentation, protection, and control technicians

### Petroleum workers:

- Petroleum product storage, pipeline, marine transport, terminals, rail transport, road transport
- Crude oil storage facilities, pipeline, and marine transport
- Petroleum refinery facilities
- Petroleum security operations center employees and workers who support emergency response services
- Petroleum operations control rooms/centers
- Petroleum drilling, extraction, production, processing, refining, terminal operations, transporting, and retail for use as end-use fuels or feedstocks for chemical manufacturing
- Onshore and offshore operations for maintenance and emergency response
- Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them

### Natural and propane gas workers:

- Natural gas transmission and distribution pipelines, including compressor stations
- Underground storage of natural gas
- Natural gas processing plants, and those that deal with natural gas liquids
- Liquefied Natural Gas (LNG) facilities
- Natural gas security operations center, natural gas operations dispatch and control rooms/centers natural gas emergency response and customer emergencies, including natural gas leak calls
- Drilling, production, processing, refining, and transporting natural gas for use as end-use fuels, feedstocks for chemical manufacturing, or use in electricity generation
- Propane gas dispatch and control rooms and emergency response and customer emergencies, including propane leak calls
- Propane gas service maintenance and restoration, including call centers

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- Processing, refining, and transporting natural liquids, including propane gas, for use as end-use fuels or feedstocks for chemical manufacturing
- Propane gas storage, transmission, and distribution centers

## **WATER AND WASTEWATER**

Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:

- Operational staff at water authorities
- Operational staff at community water systems
- Operational staff at wastewater treatment facilities
- Workers repairing water and wastewater conveyances and performing required sampling or monitoring
- Operational staff for water distribution and testing
- Operational staff at wastewater collection facilities
- Operational staff and technical support for SCADA Control systems
- Chemical disinfectant suppliers for wastewater and personnel protection
- Workers that maintain digital systems infrastructure supporting water and wastewater operations

## **TRANSPORTATION AND LOGISTICS**

- Employees supporting or enabling transportation functions, including dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, and workers that maintain and inspect infrastructure (including those that require cross-border travel)
- Employees of firms providing services that enable logistics operations, including cooling, storing, packaging, and distributing products for wholesale or retail sale or use.
- Mass transit workers
- Workers responsible for operating dispatching passenger, commuter and freight trains and maintaining rail infrastructure and equipment
- Maritime transportation workers - port workers, mariners, equipment operators
- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services
- Automotive repair and maintenance facilities
- Manufacturers and distributors (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations
- Postal and shipping workers, to include private companies
- Employees who repair and maintain vehicles, aircraft, rail equipment, marine vessels, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers
- Air transportation employees, including air traffic controllers, ramp personnel, aviation security, and aviation management
- Workers who support the maintenance and operation of cargo by air transportation, including flight crews, maintenance, airport operations, and other on- and off- airport facilities workers

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## **PUBLIC WORKS**

- Workers who support the operation, inspection, and maintenance of essential dams, locks and levees
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences
- Support, such as road and line clearing, to ensure the availability of needed facilities, transportation, energy and communications
- Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste

## **COMMUNICATIONS AND INFORMATION TECHNOLOGY**

### **Communications:**

- Maintenance of communications infrastructure- including privately owned and maintained communication systems- supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, Internet Exchange Points, and manufacturers and distributors of communications equipment
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and/or technicians to manage the network or operate facilities
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables
- Installation, maintenance and repair technicians that establish, support or repair service as needed
- Central office personnel to maintain and operate central office, data centers, and other network office facilities
- Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, and troubleshooting
- Dispatchers involved with service repair and restoration

### **Information Technology:**

- Workers who support command centers, including, but not limited to Network Operations Command Center, Broadcast Operations Control Center and Security Operations Command Center
- Data center operators, including system administrators, HVAC & electrical engineers, security personnel, IT managers, data transfer solutions engineers, software and hardware engineers, and database administrators
- Client service centers, field engineers, and other technicians supporting critical infrastructure, as well as

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manufacturers and supply chain vendors that provide hardware and software, and information technology equipment (to include microelectronics and semiconductors) for critical infrastructure

- Workers responding to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, and other critical infrastructure categories and personnel
- Workers supporting the provision of essential global, national and local infrastructure for computing services (incl. cloud computing services), business infrastructure, web-based services, and critical manufacturing
- Workers supporting communications systems and information technology used by law enforcement, public safety, medical, energy and other critical industries
- Support required for continuity of services, including janitorial/cleaning personnel

## **OTHER COMMUNITY-BASED GOVERNMENT OPERATIONS AND ESSENTIAL FUNCTIONS**

- Workers to ensure continuity of building functions
- Security staff to maintain building access control and physical security measures
- Elections personnel
- Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks
- Trade Officials (FTA negotiators; international data flow administrators)
- Weather forecasters
- Workers that maintain digital systems infrastructure supporting other critical government operations
- Workers at operations centers necessary to maintain other essential functions
- Workers who support necessary credentialing, vetting and licensing operations for transportation workers
- Customs workers who are critical to facilitating trade in support of the national emergency response supply chain
- Educators supporting public and private K-12 schools, colleges, and universities for purposes of facilitating distance learning or performing other essential functions, if operating under rules for social distancing
- Hotel Workers where hotels are used for COVID-19 mitigation and containment measures

## **CRITICAL MANUFACTURING**

- Workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

## **HAZARDOUS MATERIALS**

- Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits
- Workers who support hazardous materials response and cleanup
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations

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## FINANCIAL SERVICES

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities)
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers)
- Workers who support financial operations, such as those staffing data and security operations centers

## CHEMICAL

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, and paper products.
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, and packaging that prevents the contamination of food, water, medicine, among others essential products
- Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and/or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing

## DEFENSE INDUSTRIAL BASE

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military. These individuals, include but are not limited to, aerospace; mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers
- Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities

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# **EXHIBIT 12**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

SENATE JOURNAL  
APR 30 2020 PM9:27

## EXECUTIVE ORDER

No. 2020-66

### **Termination of the states of emergency and disaster declared under the Emergency Management Act in Executive Order 2020-33**

On March 10, 2020, I issued Executive Order 2020-4, which declared a state of emergency in Michigan to address the COVID-19 pandemic. This new disease, caused by a novel coronavirus not previously identified in humans, can easily spread from person to person and can result in serious illness or death. There is currently no approved vaccine or antiviral treatment.

Scarcely three weeks later, the virus had spread across Michigan. As of April 1, 2020, the state had 9,334 confirmed cases of COVID-19 and 337 deaths from the disease, with many thousands more infected but not yet tested. The virus's rapid and relentless spread threatened to quickly overwhelm the state's health care system: hospitals in multiple counties were reportedly at or near capacity; medical personnel, supplies, and resources necessary to treat COVID-19 patients were in high demand but short supply; dormitories and a convention center were being converted to temporary field hospitals. And the virus had also brought deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions.

On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan. Like Executive Order 2020-4, this declaration was based on multiple independent authorities: section 1 of article 5 of the Michigan Constitution of 1963; the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq.; and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq. On April 7, 2020, the Michigan legislature adopted a concurrent resolution to extend the states of emergency and disaster declared under the Emergency Management Act until April 30, 2020.

Since I first declared an emergency in response to this pandemic, my administration has taken aggressive measures to fight the spread of COVID-19, prevent the rapid depletion of this state's critical health care resources, and avoid needless deaths. The best way to slow the spread of the virus is for people to stay home and keep their distance from others. To that end, and in keeping with the recommendations of public health experts, I have issued

orders restricting access to places of public accommodation and school buildings, limiting gatherings and travel, and requiring workers who are not necessary to sustain or protect life to remain at home. I have also issued orders enhancing the operational capacity and efficiency of health care facilities and operations, allowing health care professionals to practice to the full extent of their training regardless of licensure, and facilitating the delivery of goods, supplies, equipment, and personnel that are needed to combat this pandemic. And I have taken steps to begin building the public health infrastructure in this state that is necessary to contain the infection.

My administration has also moved quickly to mitigate the economic and social harms of this pandemic. Through my orders, we have placed strict rules on businesses to prevent price gouging, put a temporary hold on evictions for families that cannot make their rent, expanded eligibility for unemployment benefits, provided protections to workers who stay home when they or their close contacts are sick, and created a structure through which our schools can continue to provide their students with the highest level of educational opportunities possible under the difficult circumstances now before us.

These statewide measures have been effective, but the need for them—like the unprecedented crisis posed by this global pandemic—is far from over. Though its pace of growth has showed signs of slowing, the virus remains aggressive and persistent: to date, there have been 41,379 confirmed cases of COVID-19 in Michigan, and 3,789 deaths from the disease—fourfold and tenfold increases, respectively, since the start of this month. And there are still countless more who are infected but have not yet been tested. There remains no treatment for the virus; it remains exceptionally easy to transmit, passing from asymptomatic individuals and surviving on surfaces for days; and we still lack adequate means to fully test for it and trace its spread. COVID-19 remains present and pervasive in Michigan, and it stands ready to quickly undo our recent progress in slowing its spread. Indeed, while COVID-19 initially hit Southeast Michigan hardest, the disease is now increasing more quickly in other parts of the state. For instance, cases in some counties in Western and Northern Michigan are now doubling every 6 days or faster.

The economic and social harms from this pandemic likewise persist. Due to the pandemic and the responsive measures necessary to address it, businesses and government agencies have had to quickly and dramatically adjust how they work. Where working from home is not possible, businesses have closed or significantly restricted their normal operations. Michiganders are losing their jobs in record numbers: to date, roughly one quarter of the eligible workforce has filed for unemployment. And state revenue, used to fund many essential services such as our schools, has dropped sharply.

The economic damage—already severe—will continue to compound with time. Between March 15 and April 18, Michigan had 1.2 million initial unemployment claims—the fifth-highest nationally, amounting to nearly 24% of the Michigan workforce. During this crisis, Michigan has often processed more unemployment claims in a single day than in the most painful week of the Great Recession, and the state has already reached its highest unemployment rate since the Great Depression. On April 9, 2020, economists at the University of Michigan forecasted that the U.S. economy will contract by 7% in the second quarter of this year, or roughly an annualized rate of 25%. As a result, many families in Michigan will struggle to pay their bills or even put food on the table.



So too will the pandemic continue to disrupt our homes and our educational, civic, social, and religious institutions. Transitioning almost overnight to a distance-learning environment has placed strain on educators, students, and parents alike. The closure of museums and theaters limits people's ability to enrich themselves through the arts. And curtailing gatherings has left many seeking new ways to connect with their community during these challenging times.

The health, economic, and social harms of the COVID-19 pandemic thus remain widespread and severe, and they continue to constitute a statewide emergency and disaster. While the virus has afflicted some regions of the state more severely than others, the extent of the virus's spread, coupled with its elusiveness and its ease of transmission, render the virus difficult to contain and threaten the entirety of this state. Although local health departments have some limited capacity to respond to cases as they arise within their jurisdiction, state emergency operations are necessary to bring this pandemic under control in Michigan and to build and maintain infrastructure to stop the spread of COVID-19, trace infections, and quickly direct additional resources to hotspots as they arise. State assistance to bolster health care capacity and flexibility also has been, and will continue to be, critical to saving lives, protecting public health and safety, and averting catastrophe.

Moreover, state disaster and emergency recovery efforts remain necessary not only to support Michiganders in need due to the economic effects of this pandemic, but also to ensure that the prospect of lost income does not impel workers who may be infected to report to work, which would undermine infection control and contribute to further spread of the virus. Statewide coordination of these efforts is crucial to creating a stable path to recovery. Until that recovery is underway, the economic and fiscal harms from this pandemic have been contained, and the threats posed by COVID-19 to life and the public health, safety, and welfare of this state have been neutralized, statewide disaster and emergency conditions will exist.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

The Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., provides that "[t]he governor shall, by executive order or proclamation, declare a state of emergency" and/or a "state of disaster" upon finding that an emergency and/or disaster has occurred or is threatening to occur. MCL 30.403(3) & (4). The Emergency Management Act further provides that a declared state of emergency or disaster

shall continue until the governor finds that the threat or danger has passed, the [disaster/emergency] has been dealt with to the extent that [disaster/emergency] conditions no longer exist, or until the declared state of [disaster/emergency] has been in effect for 28 days. After 28 days, the governor shall issue an executive order or proclamation declaring the state of [disaster/emergency] terminated, unless a request by the governor for an extension of the state of [disaster/emergency] for a specific number of days is approved by resolution of both houses of the legislature. [*Id.*]

For the reasons set forth above, the threat and danger posed to Michigan by the COVID-19 pandemic has by no means passed, and the disaster and emergency conditions it has created still very much exist. Twenty-eight days, however, have elapsed since I declared states of emergency and disaster under the Emergency Management Act in Executive Order 2020-33. And while I have sought the legislature's agreement that these declared states of emergency and disaster should be extended, the legislature—despite the clear and ongoing danger to the state—has refused to extend them beyond today.

Accordingly, acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. The state of emergency declared under the Emergency Management Act in Executive Order 2020-33 is terminated.
2. The state of disaster declared under the Emergency Management Act in Executive Order 2020-33 is terminated.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 30, 2020

Time: 7:29 pm



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GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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SECRETARY OF STATE



# **EXHIBIT 13**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

SENATE JOURNAL  
APR 30 2020 PM9:27

## EXECUTIVE ORDER

No. 2020-68

### **Declaration of states of emergency and disaster under the Emergency Management Act, 1976 PA 390**

On March 10, 2020, I issued Executive Order 2020-4, which declared a state of emergency in Michigan to address the COVID-19 pandemic. This new disease, caused by a novel coronavirus not previously identified in humans, can easily spread from person to person and can result in serious illness or death. There is currently no approved vaccine or antiviral treatment.

Scarcely three weeks later, the virus had spread across Michigan. As of April 1, 2020, the state had 9,334 confirmed cases of COVID-19 and 337 deaths from the disease, with many thousands more infected but not yet tested. The virus's rapid and relentless spread threatened to quickly overwhelm the state's health care system: hospitals in multiple counties were reportedly at or near capacity; medical personnel, supplies, and resources necessary to treat COVID-19 patients were in high demand but short supply; dormitories and a convention center were being converted to temporary field hospitals. And the virus had also brought deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions.

On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan. Like Executive Order 2020-4, this declaration was based on multiple independent authorities: section 1 of article 5 of the Michigan Constitution of 1963; the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq.; and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq. On April 7, 2020, the Michigan legislature adopted a concurrent resolution to extend the states of emergency and disaster declared under the Emergency Management Act until April 30, 2020.

Since I first declared an emergency in response to this pandemic, my administration has taken aggressive measures to fight the spread of COVID-19, prevent the rapid depletion of this state's critical health care resources, and avoid needless deaths. The best way to slow

the spread of the virus is for people to stay home and keep their distance from others. To that end, and in keeping with the recommendations of public health experts, I have issued orders restricting access to places of public accommodation and school buildings, limiting gatherings and travel, and requiring workers who are not necessary to sustain or protect life to remain at home. I have also issued orders enhancing the operational capacity and efficiency of health care facilities and operations, allowing health care professionals to practice to the full extent of their training regardless of licensure, and facilitating the delivery of goods, supplies, equipment, and personnel that are needed to combat this pandemic. And I have taken steps to begin building the public health infrastructure in this state that is necessary to contain the infection.

My administration has also moved quickly to mitigate the economic and social harms of this pandemic. Through my orders, we have placed strict rules on businesses to prevent price gouging, put a temporary hold on evictions for families that cannot make their rent, expanded eligibility for unemployment benefits, provided protections to workers who stay home when they or their close contacts are sick, and created a structure through which our schools can continue to provide their students with the highest level of educational opportunities possible under the difficult circumstances now before us.

These statewide measures have been effective, but the need for them—like the unprecedented crisis posed by this global pandemic—is far from over. Though its pace of growth has showed signs of slowing, the virus remains aggressive and persistent: to date, there have been 41,379 confirmed cases of COVID-19 in Michigan, and 3,789 deaths from the disease—fourfold and tenfold increases, respectively, since the start of this month. And there are still countless more who are infected but have not yet been tested. There remains no treatment for the virus; it remains exceptionally easy to transmit, passing from asymptomatic individuals and surviving on surfaces for days; and we still lack adequate means to fully test for it and trace its spread. COVID-19 remains present and pervasive in Michigan, and it stands ready to quickly undo our recent progress in slowing its spread. Indeed, while COVID-19 initially hit Southeast Michigan hardest, the disease is now increasing more quickly in other parts of the state. For instance, cases in some counties in Western and Northern Michigan are now doubling every 6 days or faster.

The economic and social harms from this pandemic likewise persist. Due to the pandemic and the responsive measures necessary to address it, businesses and government agencies have had to quickly and dramatically adjust how they work. Where working from home is not possible, businesses have closed or significantly restricted their normal operations. Michiganders are losing their jobs in record numbers: to date, roughly one quarter of the eligible workforce has filed for unemployment. And state revenue, used to fund many essential services such as our schools, has dropped sharply.

The economic damage—already severe—will continue to compound with time. Between March 15 and April 18, Michigan had 1.2 million initial unemployment claims—the fifth-highest nationally, amounting to nearly 24% of the Michigan workforce. During this crisis, Michigan has often processed more unemployment claims in a single day than in the most painful week of the Great Recession, and the state has already reached its highest unemployment rate since the Great Depression. On April 9, 2020, economists at the

University of Michigan forecasted that the U.S. economy will contract by 7% in the second quarter of this year, or roughly an annualized rate of 25%. As a result, many families in Michigan will struggle to pay their bills or even put food on the table.

So too will the pandemic continue to disrupt our homes and our educational, civic, social, and religious institutions. Transitioning almost overnight to a distance-learning environment has placed strain on educators, students, and parents alike. The closure of museums and theaters limits people's ability to enrich themselves through the arts. And curtailing gatherings has left many seeking new ways to connect with their community during these challenging times.

The health, economic, and social harms of the COVID-19 pandemic thus remain widespread and severe, and they continue to constitute a statewide emergency and disaster. While the virus has afflicted some regions of the state more severely than others, the extent of the virus's spread, coupled with its elusiveness and its ease of transmission, render the virus difficult to contain and threaten the entirety of this state. Although local health departments have some limited capacity to respond to cases as they arise within their jurisdiction, state emergency operations are necessary to bring this pandemic under control in Michigan and to build and maintain infrastructure to stop the spread of COVID-19, trace infections, and quickly direct additional resources to hotspots as they arise. State assistance to bolster health care capacity and flexibility also has been, and will continue to be, critical to saving lives, protecting public health and safety, and averting catastrophe.

Moreover, state disaster and emergency recovery efforts remain necessary not only to support Michiganders in need due to the economic effects of this pandemic, but also to ensure that the prospect of lost income does not impel workers who may be infected to report to work, which would undermine infection control and contribute to further spread of the virus. Statewide coordination of these efforts is crucial to creating a stable path to recovery. Until that recovery is underway, the economic and fiscal harms from this pandemic have been contained, and the threats posed by COVID-19 to life and the public health, safety, and welfare of this state have been neutralized, statewide disaster and emergency conditions will exist.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

The Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., provides that "[t]he governor is responsible for coping with dangers to this state or the people of this state presented by a disaster or emergency." MCL 30.403(1). In particular, the Emergency Management Act mandates that "[t]he governor shall, by executive order or proclamation, declare a state of emergency" and/or a "state of disaster" upon finding that an emergency and/or disaster has occurred or is threatening to occur. MCL 30.403(3) & (4). Under the Emergency Management Act, an emergency constitutes "any occasion or instance in which the governor determines state assistance is needed to supplement local efforts and capabilities to save lives, protect property and the public health and safety, or to lessen or avert the threat of a catastrophe in any part of the state." MCL 30.402(h). And a disaster constitutes "an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or human-made cause, including, but not limited to, . . . epidemic." MCL 30.402(e).

Acting under the Michigan Constitution of 1963 and Michigan law:

1. I now declare a state of emergency and a state of disaster across the State of Michigan under the Emergency Management Act.
2. The Emergency Management and Homeland Security Division of the Department of State Police must coordinate and maximize all state efforts that may be activated to state service to assist local governments and officials and may call upon all state departments to utilize available resources to assist.
3. This order is effective immediately and continues through May 28, 2020 at 11:59 pm.
4. I will evaluate the continuing need for this order prior to its expiration.
5. All previous orders that rested on Executive Order 2020-33 now rest on this order.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 30, 2020

Time: 7:30 pm



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GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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SECRETARY OF STATE

# **EXHIBIT 14**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

## EXECUTIVE ORDER

SENATE JOURNAL  
APR 30 2020 PM9:27

No. 2020-67

### Declaration of state of emergency under the Emergency Powers of the Governor Act, 1945 PA 302

On March 10, 2020, I issued Executive Order 2020-4, which declared a state of emergency in Michigan to address the COVID-19 pandemic. This new disease, caused by a novel coronavirus not previously identified in humans, can easily spread from person to person and can result in serious illness or death. There is currently no approved vaccine or antiviral treatment.

Scarcely three weeks later, the virus had spread across Michigan. As of April 1, 2020, the state had 9,334 confirmed cases of COVID-19 and 337 deaths from the disease, with many thousands more infected but not yet tested. The virus's rapid and relentless spread threatened to quickly overwhelm the state's health care system: hospitals in multiple counties were reportedly at or near capacity; medical personnel, supplies, and resources necessary to treat COVID-19 patients were in high demand but short supply; dormitories and a convention center were being converted to temporary field hospitals. And the virus had also brought deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions.

On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan. Like Executive Order 2020-4, this declaration was based on multiple independent authorities: section 1 of article 5 of the Michigan Constitution of 1963; the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq.; and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq. On April 7, 2020, the Michigan legislature adopted a concurrent resolution to extend the states of emergency and disaster declared under the Emergency Management Act until April 30, 2020.

Since I first declared an emergency in response to this pandemic, my administration has taken aggressive measures to fight the spread of COVID-19, prevent the rapid depletion of this state's critical health care resources, and avoid needless deaths. The best way to slow



the spread of the virus is for people to stay home and keep their distance from others. To that end, and in keeping with the recommendations of public health experts, I have issued orders restricting access to places of public accommodation and school buildings, limiting gatherings and travel, and requiring workers who are not necessary to sustain or protect life to remain at home. I have also issued orders enhancing the operational capacity and efficiency of health care facilities and operations, allowing health care professionals to practice to the full extent of their training regardless of licensure, and facilitating the delivery of goods, supplies, equipment, and personnel that are needed to combat this pandemic. And I have taken steps to begin building the public health infrastructure in this state that is necessary to contain the infection.

My administration has also moved quickly to mitigate the economic and social harms of this pandemic. Through my orders, we have placed strict rules on businesses to prevent price gouging, put a temporary hold on evictions for families that cannot make their rent, expanded eligibility for unemployment benefits, provided protections to workers who stay home when they or their close contacts are sick, and created a structure through which our schools can continue to provide their students with the highest level of educational opportunities possible under the difficult circumstances now before us.

These statewide measures have been effective, but the need for them—like the unprecedented crisis posed by this global pandemic—is far from over. Though its pace of growth has showed signs of slowing, the virus remains aggressive and persistent: to date, there have been 41,379 confirmed cases of COVID-19 in Michigan, and 3,789 deaths from the disease—fourfold and tenfold increases, respectively, since the start of this month. And there are still countless more who are infected but have not yet been tested. There remains no treatment for the virus; it remains exceptionally easy to transmit, passing from asymptomatic individuals and surviving on surfaces for days; and we still lack adequate means to fully test for it and trace its spread. COVID-19 remains present and pervasive in Michigan, and it stands ready to quickly undo our recent progress in slowing its spread. Indeed, while COVID-19 initially hit Southeast Michigan hardest, the disease is now increasing more quickly in other parts of the state. For instance, cases in some counties in Western and Northern Michigan are now doubling every 6 days or faster.

The economic and social harms from this pandemic likewise persist. Due to the pandemic and the responsive measures necessary to address it, businesses and government agencies have had to quickly and dramatically adjust how they work. Where working from home is not possible, businesses have closed or significantly restricted their normal operations. Michiganders are losing their jobs in record numbers: to date, roughly one quarter of the eligible workforce has filed for unemployment. And state revenue, used to fund many essential services such as our schools, has dropped sharply.

The economic damage—already severe—will continue to compound with time. Between March 15 and April 18, Michigan had 1.2 million initial unemployment claims—the fifth-highest nationally, amounting to nearly 24% of the Michigan workforce. During this crisis, Michigan has often processed more unemployment claims in a single day than in the most painful week of the Great Recession, and the state has already reached its highest unemployment rate since the Great Depression. On April 9, 2020, economists at the University of Michigan forecasted that the U.S. economy will contract by 7% in the second quarter of this year, or roughly an annualized rate of 25%. As a result, many families in



Michigan will struggle to pay their bills or even put food on the table.

So too will the pandemic continue to disrupt our homes and our educational, civic, social, and religious institutions. Transitioning almost overnight to a distance-learning environment has placed strain on educators, students, and parents alike. The closure of museums and theaters limits people's ability to enrich themselves through the arts. And curtailing gatherings has left many seeking new ways to connect with their community during these challenging times.

The health, economic, and social harms of the COVID-19 pandemic thus remain widespread and severe, and they continue to constitute a statewide emergency and disaster. While the virus has afflicted some regions of the state more severely than others, the extent of the virus's spread, coupled with its elusiveness and its ease of transmission, render the virus difficult to contain and threaten the entirety of this state. Although local health departments have some limited capacity to respond to cases as they arise within their jurisdiction, state emergency operations are necessary to bring this pandemic under control in Michigan and to build and maintain infrastructure to stop the spread of COVID-19, trace infections, and quickly direct additional resources to hotspots as they arise. State assistance to bolster health care capacity and flexibility also has been, and will continue to be, critical to saving lives, protecting public health and safety, and averting catastrophe.

Moreover, state disaster and emergency recovery efforts remain necessary not only to support Michiganders in need due to the economic effects of this pandemic, but also to ensure that the prospect of lost income does not impel workers who may be infected to report to work, which would undermine infection control and contribute to further spread of the virus. Statewide coordination of these efforts is crucial to creating a stable path to recovery. Until that recovery is underway, the economic and fiscal harms from this pandemic have been contained, and the threats posed by COVID-19 to life and the public health, safety, and welfare of this state have been neutralized, statewide disaster and emergency conditions will exist.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

The Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq., provides that "[d]uring times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state . . . the governor may proclaim a state of emergency and designate the area involved." MCL 10.31(1). The state of emergency ceases "upon declaration by the governor that the emergency no longer exists." MCL 10.31(2).

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. A state of emergency remains declared across the State of Michigan under the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.
2. This order is effective immediately and continues through May 28, 2020 at 11:59 pm.
3. I will evaluate the continuing need for this order prior to its expiration.

4. Executive Order 2020-33 is rescinded and replaced. All previous orders that rested on Executive Order 2020-33 now rest on this order.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 30, 2020

Time: 7:30 pm



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GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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SECRETARY OF STATE

# **EXHIBIT 15**

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30005  
LANSING, MICHIGAN 48909

DANA NESSEL  
ATTORNEY GENERAL

May 4, 2020

Re: Executive Orders 2020-69 & 2020-70

Dear Colleagues:

I am writing to clarify that, regardless of what you may have heard, Executive Order 2020-69 (temporary restrictions on the use of places of public accommodation) and Executive Order 2020-70 (temporary requirement to suspend activities that are not necessary to sustain or protect life) are valid and enforceable.

As you are aware, on April 30, 2020, Governor Whitmer issued executive orders under the Emergency Management Act and the Emergency Powers of Governor Act regarding the declared states of disaster and emergency in Michigan. In Executive Order 2020-66, the Governor terminated the states of disaster and emergency that had been previously declared under the EMA, and then, in Executive Order 2020-68, reissued a declaration of states of disaster and emergency under the EMA. A third order, Executive Order 2020-67, reiterated that a state of emergency remains declared under the EPGA.

Subsequently, the Governor issued two orders that have been the subject of debate—Executive Order 2020-69 and Executive Order 2020-70. Executive Order 2020-69 rescinded Executive Order 2020-43, but again placed temporary restrictions on the use of places of public accommodation. Executive Order 2020-70 rescinded Executive Order 2020-59, but again temporarily suspended various activities that are not necessary to sustain or protect life.

After these most recent actions, numerous legislators, and other officials, began to publicly question the validity of the Governor's declarations under the EMA, and consequently, the enforceability of Executive Order 2020-69 and Executive Order 2020-70. Such commentary has created confusion among law enforcement officials tasked with enforcing the orders. In light of this confusion, as the chief law enforcement officer for the State of Michigan, I carefully reviewed the issue and offer the following guidance.

Executive Order 2020-69 and Executive Order 2020-70 were issued by the Governor under *both* the EPGA and the EMA.

Page 2  
May 4, 2020

The EPGA authorizes the Governor, following the declaration of an emergency, to:

promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control. [MCL 10.31(1).]

The legislature has deemed this to be a “sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster.” MCL 10.32. In addition, the provisions of the EPGA are to “be broadly construed to effectuate this purpose.” *Id.*

Here, as mentioned, the Governor has declared a state of emergency under the EPGA, and Executive Order 2020-69 and Executive Order 2020-70 were issued following that declaration. Therefore, to be valid under the EPGA, the orders must be “reasonable orders” that the governor “considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1). In promulgating Executive Order 2020-69 and Executive Order 2020-70, the Governor specifically stated that she considered the restrictions imposed by those orders to be “reasonable and necessary” to mitigate the spread of COVID-19 and protect the public health across the State of Michigan. See Executive Order 2020-69, p 1-2; Executive Order 2020-70, p 1-2. I agree with that assessment.

COVID-19 has created a public health crisis of unprecedented gravity in our lifetime. Responding to, and stemming the spread of, the virus is paramount to all our well-being. To date, the most effective means to contain an infectious pandemic is to keep people away from each other. In promulgating Executive Order 2020-69 and Executive Order 2020-70, the Governor has done just that by placing restrictions on certain activities to limit social interactions. The absence of these restrictions would open gateways for the virus to reach every family and social network in every part of the State.

Consequently, the restrictions in Executive Order 2020-69 and Executive Order 2020-70 bear a real and substantial relationship to securing the public health, and they are reasonable. Further, although some restrictions on social interactions have been judiciously loosened by the Governor, the restrictions in Executive Order 2020-69 and Executive Order 2020-70 remain necessary to protect the lives of all Michiganders and bring the emergency created by COVID-19 in Michigan under control. As a result, Executive Order 2020-69 and Executive Order 2020-70 are valid and enforceable under the EPGA. Given that these orders are a valid exercise of the Governor’s authority pursuant to the EPGA, the speculation

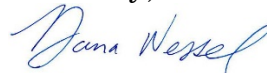
Page 3

May 4, 2020

related to the EMA is of no moment and should not create any confusion as to the enforceability of these orders.

As always, we appreciate your continued assistance in the enforcement of Executive Orders 2020-69 and 2020-70.

Sincerely,

A handwritten signature in blue ink that reads "Dana Nessel". The signature is fluid and cursive, with the first name "Dana" and last name "Nessel" clearly legible.

Dana Nessel  
Attorney General

# **EXHIBIT 16**

MI H.F.A. B. An., H.B. 5496, 1/24/2002

Michigan House Fiscal Agency Legislative Analysis, House Bill 5496

January 24, 2002

Michigan House Fiscal Agency  
91st Legislature, 2002 Regular Session

## **REVISIONS TO EMERGENCY MANAGEMENT ACT**

### **House Bill 5496 (Substitute H-1)**

#### **First Analysis (1-24-02)**

**Sponsor: Rep. Gary A. Newell**

**Committee: Commerce**

#### ***THE APPARENT PROBLEM:***

Even before the tragic terrorist attacks of September 11, 2001, state emergency planners were working on a revision of the state's Emergency Management Act to address problems and concerns that had arisen with the act since its expansion in 1990. The act is designed to allow the state to deal with so-called disasters and emergencies. It spells out the duties of state and local governments and calls for the creation of emergency management plans at the state and local level. The events of September 11, however, put the dangers of terrorism at the forefront, and concentrated public attention on the need to deal with terrorist threats through the kinds of activities associated with declarations of a "heightened state of alert". A number of provisions related to increased awareness of the threat of terrorism have been added to legislation intended to improve the operations of the state's emergency management system.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the Emergency Management Act in the following ways.

- The governor would be authorized to declare a "heightened state of alert" when good cause existed to believe that terrorists were in the state or that acts of terrorism might be committed against the state or against a vital resource. Currently, the governor is able under the act to declare a state of disaster or a state of emergency. (See below.)
- The bill would rewrite the provisions regarding immunity for those engaged in disaster relief in order to provide employees, agents, or representatives of the state or a political subdivision of the state, nongovernmental disaster relief force workers, and private or volunteer personnel engaged in disaster relief immunity from tort liability to the same extent as provided under the Governmental Immunity Act. (See below.)
- The director of each department of state government, and of any agency required by the state emergency management plan to provide an annex to that plan, would serve as emergency management coordinator for his or her respective department or agency. Currently, the act requires the directors to employ or appoint a coordinator. Instead, the bill would allow each director to appoint or employ a designated representative as emergency management coordinator, provided that the representative acted for and at the direction of the director while acting as coordinator upon the activation of the state emergency operations center or the declaration of a state of disaster or emergency.
- The bill would specify that for the purpose of states of disaster or emergency, the judicial branch of state government would be considered a department of state government and the chief justice would be considered the director of the department.
- The bill would require a public college or university with a combined average population of faculty, students, and staff of 25,000 or more, including its satellite campuses, to appoint an emergency management coordinator. Public colleges and universities with a combined average population of 10,000 or more could (but would not be required to) appoint a coordinator.



The act currently requires a county board of commissioners to appoint an emergency management coordinator (although up to three adjoining counties can combine to do this); requires a municipality with a population of 25,000 or more to appoint an emergency management coordinator or appoint the county coordinator to serve in this role; allows a municipality of 10,000 or more to appoint its own coordinator; and allows a municipality of less than 10,000 to appoint a coordinator who would serve at the direction of the county coordinator. The act further allows a county coordinator to be appointed coordinator for any municipality within the county and allows a municipal coordinator to be appointed county coordinator.

- Currently, a state of disaster or state of emergency stays in effect for 14 days, and then the governor must declare it terminated or seek an extension for a specific number of days, which must be approved by the legislature. The bill would extend the time periods for a state of disaster or emergency to 28 days rather than 14 days. It also would specifically require any extension to be approved by resolution of both houses of the legislature.

- The bill would provide that if the governor had issued a proclamation, executive order, or directive related to a state of disaster or a state of emergency, the director of the Department of State Police could, with the concurrence of the governor, amend the proclamation or directive by adding counties or municipalities or terminating the orders and restrictions as considered necessary.

- The Division of Emergency Management within the Department of State Police would be authorized, in addition to its other powers, to propose and administer statewide mutual aid compacts and agreements.

- The bill would specifically include mitigation, preparedness, response, and recovery among the emergency management activities to be included in emergency management plans and updates of those plans, and would require that emergency management plans and programs include local courts.

- Currently, the act allows municipalities and counties to enter into mutual aid or reciprocal aid agreements or compacts with other counties, municipalities, public agencies, and private sector agencies. The bill would add federally recognized tribal nations. The compacts are limited to the exchange of personnel, equipment, and other resources in times of emergency or disaster. The bill would allow the compacts in cases of other serious threats to public health and safety.

- Section 15 of the act, which created the Michigan Emergency Management Advisory Council, would be repealed. (This council had previously been eliminated by executive order in 1993.)

Heightened State of Alert. If a good cause existed to believe that terrorists were in the state or that acts of terrorism could be committed in the state or against a vital resource, the governor could by executive order or proclamation declare a heightened state of alert and subsequently exercise the same authority as for a state of disaster or state of emergency in an effort to safeguard the interests of the state or a vital resource, prevent or respond to acts of terrorism, or to help apprehend terrorists and those acting in concert with them. The governor could use the services, facilities, and resources available under a declared state of emergency or disaster. The heightened state of alert would continue until the governor found that the threat or danger had passed, the state of alert had been dealt with so that the conditions no longer existed, or until it had been in effect for 60 days. After 60 days, the governor would have to terminate the state of alert unless a request for an extension for a specific number of days was approved by resolution of both houses of the legislature.

It would be a misdemeanor for a person to willfully disobey or interfere with the implementation of a rule, order, or directive issued by the governor related to a heightened state of alert. The misdemeanor would be punishable by imprisonment for not more than 90 days or a fine of not more than \$100 or both. The attorney general or a prosecuting attorney could bring a civil action for damages or equitable relief to enforce the provisions of the act and the orders, rules, or regulations made in conformity with the act.

Immunity in Disaster Relief. Under the bill, the state or a political subdivision of the state engaged in disaster relief activity would not be liable for the death of or injury to a person or persons, or for damage to property, as a result of that activity. The employees, agents, or representatives of the state or a political subdivision, and nongovernmental disaster relief force workers or private or volunteer personnel engaged in disaster relief activity, would be immune from tort liability under Section 7 of the Governmental Immunity Act. (Generally speaking, that act provides immunity except when the conduct of the officer, employee, member, or volunteer amounts to gross negligence that is the proximate cause of the injury or damage.) The term “disaster relief activity” would include training for or responding to an actual, impending, mock, or practice disaster or emergency.

(This provision would replace the current immunity language in the act, which states that, except in cases of willful misconduct, gross negligence, or bad faith, employees, agents, or representatives of the state or a political subdivision, or any volunteer or auxiliary disaster relief worker or member of any agency engaged in disaster relief activity, complying with or reasonably attempting to comply with the act, or any order, promulgated rule, ordinance enacted by a political subdivisions relating to any precautionary measures, would not be liable for the death of or injury to persons, or for damage to property, as a result of that activity.)

Also, current language in the act applying exclusively to volunteer disaster relief workers or members of agencies engaged in disaster relief activity would be deleted. Instead the bill would say the state, any political subdivision of the state, or the employees, agents, or representatives of the state or a political subdivision would not be liable for personal injury or property damage by any person appointed or acting as a member of disaster relief forces.

[MCL 30.403](#) et al.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that the bill would have no apparent substantial fiscal impact, although there could be some administrative costs associated with new responsibilities for state and local governments and for public universities. The agency also points out that to the extent that new penalties were applied, local correctional costs would increase and fine revenue earmarked for local libraries would increase. (HFA fiscal note dated 1-15-02)

### ***ARGUMENTS:***

#### ***For:***

The bill would make a number of changes to the state's emergency management system in recognition of increased concerns about terrorism and to address problems and concerns that have arisen in administering the Emergency Management Act since its most recent revision in 1990. The bill is considered to be a component in the multi-bill legislative package on terrorism introduced since the terrorist attacks of September 11. Among the improvements to current law are the following.

- In recognition of the need to make the emergency system operative when officials believe the threat of terrorism is imminent, the governor would be authorized to declare a “heightened state of alert”, which could stay in effect for as long as 60 days. This would allow the governor and the emergency system to take precautions to protect the public and the state's critical infrastructure in advance of actual emergency or disaster. The governor would have the same powers and could use the same resources, facilities, and services, as are currently available under a state of emergency or state of disaster, in order to safeguard the state's interests and vital resources, prevent or respond to acts of terrorism, and apprehend terrorists. The state of alert could only be extended beyond 60 days with the approval, by resolution, of both houses of the state legislature.
- The bill would provide the same immunity from tort liability to disaster relief workers as now exists for officers, employees, members, and volunteers of governmental agencies under the Governmental Immunity Act.
- Currently, a state of emergency or disaster can stay in effect for only 14 days and then requires extension by the legislature. The bill would extend that time period to 28 days and would specifically require that both houses of the legislature pass a resolution in order to extend the time period. This recognizes that sometimes the legislature may not be in session during the time when a state of emergency or disaster needs extending. The longer time period makes this less likely. The act currently provides no specific procedure for the legislature to use in extending a time period; the bill makes it a clear that this must be done by resolution.
- The bill would bring both the courts, under the direction of the Michigan Supreme Court, and large public universities into the emergency management system, to make sure that there is proper coordination. As a result, universities would be treated much like municipalities are currently treated, with the largest required to appoint emergency management coordinators, and the judicial branch would be treated like a state department (with the chief justice of the state supreme court treated like a department head). State emergency officials say that the courts want to be involved in emergency planning and that local units often consider universities to be state agencies and may not include them in local emergency planning. While universities likely

already engage in emergency and disaster planning, it is important that this be done within the overall emergency planning system, so that different entities are not working at cross purposes.

- Recently, Michigan joined an interstate compact that allows participating states to provide mutual assistance in case of emergencies and disasters, and the current state emergency law allows local units to enter into similar compacts. The bill, however, would specifically permit the Emergency Management Division of the Department of State Police to organize and administer statewide mutual aid compacts and agreements. Cooperation between state and local agencies is important in providing comprehensive and appropriately aligned emergency management services.

- Department directors would be the emergency management coordinators for their departments. They then could appoint a designated representative to carry out the duties of that office. Currently, each department simply must appoint an emergency management coordinator to act as a liaison to the Department of State Police's emergency management division. The bill would ensure that there was a direct link between a department director and the duties of the department's office of emergency management coordinator and would eliminate any intermediate lines of authority. In times of emergencies, disasters, and states of alert, it is important that each department's coordinator act directly for and at the direction of the department director rather than having to go through a more complicated chain of command.

### ***Against:***

Some people have expressed misgivings about expanding the power of state agencies in the name of fighting terrorism or dealing with emergencies. This bill, for example, allows a heightened state of alert to remain in place for 60 days at the direction of the governor. That is a considerable length of time for the state government to be able to exercise emergency powers. While the legislature is given a role in extending such a state of alert, there is no provision allowing the legislature to shorten a state of alert or to override a governor's declaration. This might be a useful protection against abuses of executive power. (Moreover, the maximum duration, without legislative approval, of a state of emergency or a state of disaster would be increased from 14 days to 28 days. Similar concerns have been expressed about this.) In disasters, emergencies, and (with this bill) heightened states of alert, the government can suspend statutes and rules, control where people can travel, remove people from their homes and businesses, suspend the sale of alcohol and firearms, and engage in a variety of other activities. Questions have also been raised about the penalties that would be imposed during heightened states of alert for willfully disobeying or interfering with the implementation of a rule, order, or directive issued by the governor. Additionally, there are concerns about the impact of new requirements on public universities and questions about whether they have been consulted about these new requirements.

### ***Response:***

It is expected that a variety of concerns and issues will be addressed as the bill moves through the legislative process. It should be noted that the penalties in the bill relating to heightened states of alert are consistent with those currently in the act for states of emergency and disaster.

### ***POSITIONS:***

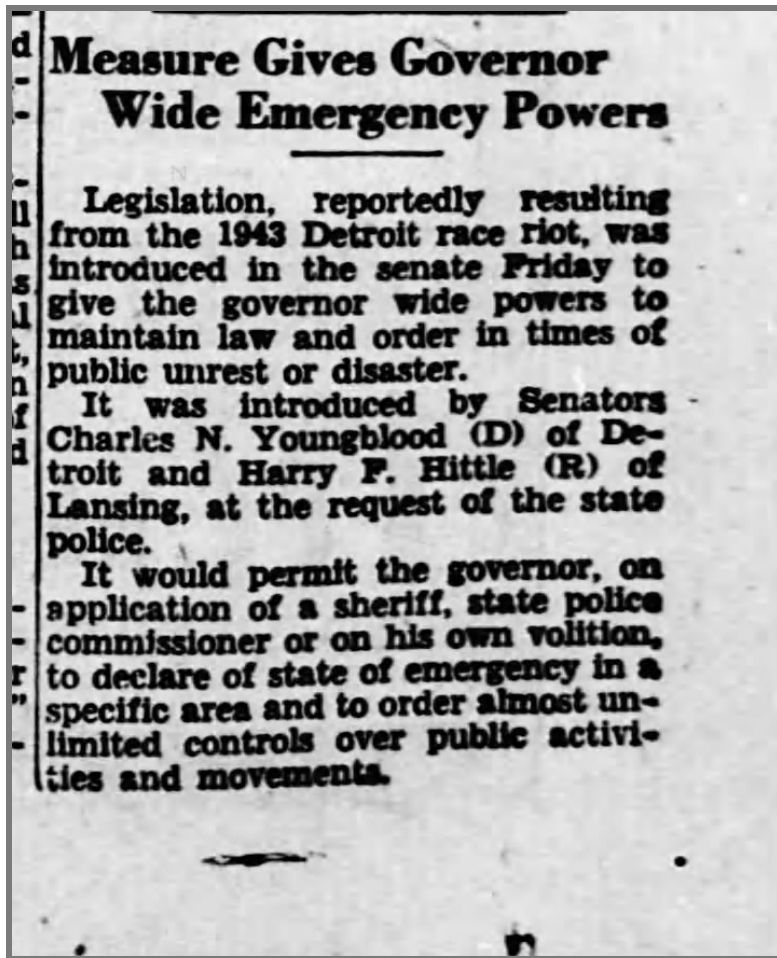
Representatives of the Department of State Police testified in support of the bill. (1-22-02)

Analyst: C. Couch

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

MI H.F.A. B. An., H.B. 5496, 1/24/2002

# **EXHIBIT 17**



Clipped By:

mcampagna  
Wed, Apr 29, 2020

# **EXHIBIT 18**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

## **EXECUTIVE ORDER**

**No. 2020-92**

**Temporary requirement to suspend certain activities that  
are not necessary to sustain or protect life**

**Rescission of Executive Orders 2020-77 and 2020-90**

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 Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared 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 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on 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. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I 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.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of



emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To suppress the spread of COVID-19, to prevent the state’s health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, to establish the public health infrastructure necessary to contain the spread of infection, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. In Executive Orders 2020-42, 2020-59, 2020-70, and 2020-77, I extended that initial order, modifying its scope as needed and appropriate to match the ever-changing circumstances presented by this pandemic.

The measures put in place by Executive Orders 2020-21, 2020-42, 2020-59, 2020-70, and 2020-77 have been effective: the number of new confirmed cases each day has started to drop. Although the virus remains aggressive and persistent—on May 17, 2020, Michigan reported 51,142 confirmed cases and 4,891 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We can now start the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-77. The order is being reissued to omit worker safeguards that were included in prior versions of this order but which have now been adopted in Executive Order 2020-91, a standalone order on worker protection. It has also been amended to allow, in two regions, social gatherings of up to 10 people and to permit the reopening of retail stores, offices, and restaurants and bars with limited seating. Finally, the order incorporates and replaces Executive Order 2020-90, which allowed research laboratories to resume activities.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. For purposes of this order, Michigan comprises eight separate regions:
  - (a) Region 1 includes the following counties: Monroe, Washtenaw, Livingston, Genesee, Lapeer, Saint Clair, Oakland, Macomb, and Wayne.
  - (b) Region 2 includes the following counties: Mason, Lake, Osceola, Clare, Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Ottawa, Kent, and Ionia.
  - (c) Region 3 includes the following counties: Allegan, Barry, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, Saint Joseph, and Branch.



- (d) Region 4 includes the following counties: Oscoda, Alcona, Ogemaw, Iosco, Gladwin, Arenac, Midland, Bay, Saginaw, Tuscola, Sanilac, and Huron.
  - (e) Region 5 includes the following counties: Gratiot, Clinton, Shiawassee, Eaton, and Ingham.
  - (f) Region 6 includes the following counties: Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, and Emmet.
  - (g) Region 7 includes the following counties: Hillsdale, Lenawee, and Jackson.
  - (h) Region 8 includes the following counties: Gogebic, Ontonagon, Houghton, Keweenaw, Iron, Baraga, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa.
- 3. Subject to the exceptions in section 8 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.
  - 4. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention (“CDC”), including remaining at least six feet from people from outside the individual’s household to the extent feasible under the circumstances.
  - 5. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life, to conduct minimum basic operations, or to perform a resumed activity within the meaning of this order.
    - (a) For purposes of this order, workers who are necessary to sustain or protect life are defined as “critical infrastructure workers,” as described in sections 9 and 10 of this order.
    - (b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in Executive Order 2020-91 and any orders that follow or replace it.

- (c) Workers who perform resumed activities are defined in section 11 of this order.
6. Businesses and operations that employ critical infrastructure workers or workers who perform resumed activities may continue in-person operations, subject to the following conditions:
- (a) Consistent with sections 9, 10, and 11 of this order, businesses and operations must determine which of their workers are critical infrastructure workers or workers who perform resumed activities and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work. Businesses and operations need not designate:
    - (1) Workers in health care and public health.
    - (2) Workers who perform necessary government activities, as described in section 7 of this order.
    - (3) Workers and volunteers described in section 10(d) of this order.
  - (b) In-person activities that are not necessary to sustain or protect life or to perform a resumed activity must be suspended.
  - (c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in Executive Order 2020-91 and any orders that follow or replace it.
  - (d) Any business or operation that employs workers who perform resumed activities under section 11(a) of this order, but that does not sell necessary supplies, may sell any goods through remote sales via delivery or at the curbside. Such a business or operation, however, must otherwise remain closed to the public.
7. All in-person government activities at whatever level (state, county, or local) are suspended unless:
- (a) They are performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders, as defined in sections 9 and 10 of this order.

- (b) They are performed by workers who are permitted to resume work under section 11 of this order.
- (c) They are necessary to support the activities of workers described in sections 9, 10, and 11 of this order, or to enable transactions that support businesses or operations that employ such workers.
- (d) They involve public transit, trash pick-up and disposal (including recycling and composting), the management and oversight of elections, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.
- (e) For purposes of this order, necessary government activities include minimum basic operations, as described in 5(b) of this order. Workers performing such activities need not be designated.
- (f) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in Executive Order 2020-91 and any orders that follow or replace it.

8. Exceptions.

- (a) Individuals may leave their home or place of residence, and travel as necessary:
  - (1) To engage in outdoor recreational activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor recreational activity includes walking, hiking, running, cycling, boating, golfing, or other similar activity, as well as any comparable activity for those with limited mobility.
  - (2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 6(a) of this order may leave their home for work without being designated.)
  - (3) To conduct minimum basic operations, as described in section 5(b) of this order, after being designated to perform such work by their employers.
  - (4) To perform resumed activities, as described in section 11 of this order, after being designated to perform such work by their employers.
  - (5) To perform necessary government activities, as described in section 7 of this order.
  - (6) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a

medical emergency or to preserve the health and safety of a household or family member (including in-person procedures or veterinary services that, in accordance with a duly implemented non-essential procedure or veterinary services postponement plan, have not been postponed).

- (7) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their motor vehicles.
  - (A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences or motor vehicles.
  - (B) Individuals may also leave the home to pick up or return a motor vehicle as permitted under section 10(i) of this order, or to have a motor vehicle or bicycle repaired or maintained.
  - (C) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
- (8) To pick up non-necessary supplies at the curbside from a store that must otherwise remain closed to the public.
- (9) To care for a family member or a family member's pet in another household.
- (10) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
- (11) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
- (12) To visit a child in out-of-home care, or to facilitate a visit between a parent and a child in out-of-home care, when there is agreement between the child placing agency, the parent, and the caregiver about a safe visitation plan, or when, failing such agreement, the individual secures an exception from the executive director of the Children's Services Agency.
- (13) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
- (14) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
- (15) To attend a funeral, provided that no more than 10 people are in attendance.

- (16) To attend a meeting of an addiction recovery mutual aid society, provided that no more than 10 people are in attendance.
  - (17) To view a real-estate listing by appointment, as permitted under section 11(g) of this order.
  - (18) To participate in training, credentialing, or licensing activities permitted under section 11(i) of this order.
  - (19) For individuals in Regions 6 or 8, to go to a restaurant or a retail store or to attend a social gathering of up to 10 people.
- (b) Individuals may also travel:
- (1) To return to a home or place of residence from outside this state.
  - (2) To leave this state for a home or residence elsewhere.
  - (3) Between two residences in this state, including moving to a new residence.
  - (4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.
- (c) All other travel is prohibited, including all travel to vacation rentals.
9. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). This order does *not* adopt any subsequent guidance document released by this same agency.
- Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:
- (a) Health care and public health.
  - (b) Law enforcement, public safety, and first responders.
  - (c) Food and agriculture.
  - (d) Energy.
  - (e) Water and wastewater.
  - (f) Transportation and logistics.
  - (g) Public works.

- (h) Communications and information technology, including news media.
- (i) Other community-based government operations and essential functions.
- (j) Critical manufacturing.
- (k) Hazardous materials.
- (l) Financial services.
- (m) Chemical supply chains and safety.
- (n) Defense industrial base.

10. For purposes of this order, critical infrastructure workers also include:

- (a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of critical infrastructure workers, workers who conduct minimum basic operations, workers who perform necessary government activities, or workers who perform resumed activities. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.
- (b) Workers at suppliers, distribution centers, or service providers, as described below.
  - (1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in sub-provision (1) of this subsection may designate their workers as critical infrastructure workers provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (3) Consistent with the scope of work permitted under sub-provision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

- (4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
  - (c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.
  - (d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
  - (e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
  - (f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences or motor vehicles, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
  - (g) Workers at laundromats, coin laundries, and dry cleaners.
  - (h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
  - (i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.
11. For purposes of this order, workers who perform resumed activities are defined as follows:
- (a) Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
  - (b) Workers who perform bicycle maintenance or repair.
  - (c) Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations.
  - (d) Workers for moving or storage operations.



- (e) Workers who perform work that is traditionally and primarily performed outdoors, including but not limited to forestry workers, outdoor power equipment technicians, parking enforcement workers, and outdoor workers at places of outdoor recreation not otherwise closed under Executive Order 2020-69 or any order that may follow from it.
- (f) Workers in the construction industry, including workers in the building trades (plumbers, electricians, HVAC technicians, and similar workers).
- (g) Workers in the real-estate industry, including agents, appraisers, brokers, inspectors, surveyors, and registers of deeds, provided that:
  - (1) Any showings, inspections, appraisals, photography or videography, or final walk-throughs must be performed by appointment and must be limited to no more than four people on the premises at any one time. No in-person open houses are permitted.
  - (2) Private showings may only be arranged for owner-occupied homes, vacant homes, vacant land, commercial property, and industrial property.
- (h) Workers necessary to the manufacture of goods that support workplace modification to forestall the spread of COVID-19 infections.
- (i) Workers necessary to train, credential, and license first responders (e.g., police officers, fire fighters, paramedics) and health-care workers, including certified nursing assistants, provided that as much instruction as possible is provided remotely.
- (j) Workers necessary to perform manufacturing activities. Manufacturing work may not commence under this subsection until the facility at which the work will be performed has been prepared to follow the workplace safeguards described in section 4 of Executive Order 2020-91 and any orders that follow or replace it.
- (k) Workers necessary to conduct research activities in a laboratory setting.
- (l) For Regions 6 and 8, beginning at 12:01 am on May 22, workers necessary to perform retail activities. For purposes of this order, retail activities are defined to exclude those places of public accommodation that are closed under Executive Order 2020-69 and any orders that follow or replace it.
- (m) For Regions 6 and 8, beginning at 12:01 am on May 22, workers who work in an office setting, but only to the extent that such work is not capable of being performed remotely.
- (n) For Regions 6 and 8, beginning at 12:01 am on May 22, workers in restaurants or bars, subject to the capacity constraints and workplace standards described in Executive Order 2020-91. Nothing in this subsection should be taken to abridge or otherwise modify the existing power of a local government to impose further restrictions on restaurants or bars.



- (o) Workers necessary to prepare a workplace to follow the workplace standards described in Executive Order 2020-91.
  - (p) Consistent with section 10(b) of this order, workers at suppliers, distribution centers, or service providers whose in-person presence is necessary to enable, support, or facilitate another business's or operation's resumed activities, including workers at suppliers, distribution centers, or service providers along the supply chain whose in-person presence is necessary to enable, support, or facilitate the necessary work of another supplier, distribution center, or service provider in enabling, supporting, or facilitating another business's or operation's resumed activities. Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
12. Any store that is open for in-store sales under section 10(f) or section 11(c) of this executive order:
- (a) May continue to sell goods other than necessary supplies if the sale of such goods is in the ordinary course of business.
  - (b) Must consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
13. No one shall rent a short-term vacation property except as necessary to assist in housing a health care professional aiding in the response to the COVID-19 pandemic or a volunteer who is aiding the same.
14. Michigan state parks remain open for day use, subject to any reductions in services and specific closures that, in the judgment of the director of the Department of Natural Resources, are necessary to minimize large gatherings and to prevent the spread of COVID-19.
15. Rules governing face coverings.
- (a) Except as provided in subsection (b) of this section, any individual able to medically tolerate a face covering must wear a covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space.
  - (b) An individual may be required to temporarily remove a face covering upon entering an enclosed public space for identification purposes or while seated at a restaurant or bar.
  - (c) All businesses and operations whose workers perform in-person work must, at a minimum, provide non-medical grade face coverings to their workers.
  - (d) Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters,

paramedics), and other critical workers who interact with the public.

- (e) The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.

16. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, neither a place of religious worship nor its owner is subject to penalty under section 20 of this order for allowing religious worship at such place. No individual is subject to penalty under section 20 of this order for engaging in or traveling to engage in religious worship at a place of religious worship, or for violating section 15(a) of this order.
17. 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. Similarly, nothing in this order shall be taken to abridge protections guaranteed by the state or federal constitution under these emergency circumstances.
18. This order takes effect immediately, unless otherwise specified in this order, and continues through May 28, 2020 at 11:59 pm. Executive Orders 2020-77 and 2020-90 are rescinded. All references to those orders in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.
19. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.
20. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.



Date: May 18, 2020

Time: 1:15 pm

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GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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SECRETARY OF STATE