

**SENATE FISCAL AGENCY  
 MEMORANDUM**

**DATE:** March 31, 2020

**TO:** Members of the Michigan Senate

**FROM:** Ellyn Ackerman, Bruce Baker, Ryan Bergan, Joe Carrasco, John Maxwell, Elizabeth Raczkowski, Cory Savino, and Michael Siracuse, Fiscal Analysts; David Zin, Chief Economist; and Steven Angelotti, Jeff Mann, and Kathryn Summers, Associate Directors

**RE:** Coronavirus Disease 2019 (COVID-19) Executive Orders 2020-4 - 2020-16, 2020-18, 2020-20, and 2020-24

**Overview**

On March 10, 2020, through March 30, 2020, Governor Whitmer issued Executive Orders (EOs) 2020-4 through 2020-29 to declare a state of emergency across the State of Michigan in relation to the outbreak of COVID-19 and to implement various measures, including, among other things, limits on the size of assemblages and events, the closure of schools, and modifications to the issuance of unemployment benefits.

This memorandum summarizes the contents and fiscal impacts of Executive Orders 2020-4, 2020-7, 2020-11 through 2020-16, 2020-18, 2020-20, and 2020-24. (Several of these orders rescind previously issued orders; if so, that information is indicated below.) A subsequent memorandum will summarize Executive Orders issued after Executive Order 2020-16 (except for the three mentioned above).

**COVID-19**

Coronavirus disease 2019, COVID-19, is a respiratory illness caused by a virus that can spread from person to person. Generally, coronaviruses cause mild, cold-like symptoms; however, severe diseases, such as Severe Acute Respiratory Syndrome (SARS) and Middle East Respiratory Syndrome (MERS) also are examples of disease caused by other forms of coronavirus. Reported symptoms of COVID-19 have ranged from mild (if any) cold-like symptoms in the majority of individuals, to severe illness or death.

The virus that causes COVID-19 was identified as the cause of an outbreak detected in Wuhan City, China, in November 2019. In late January 2020, the first case of COVID-19 in the United States was confirmed. The Michigan Department of Health and Human Services (DHHS) identified the first two positive cases of COVID-19 in Michigan on March 10, 2020. As of March 30, 2020, the DHHS has reported 6,498 illnesses and 184 deaths attributable to COVID-19.

**Authority for Orders**

Executive Order 2020-4 cites the Emergency Management Act (EMA) and Public Act (PA) 302 of 1945 (which pertains to the Governor's emergency powers) as authority for its issuance. Under the Emergency Management Act, the Governor must declare a state of emergency if he or she

finds that an emergency has occurred or that the threat of an emergency exists. In addition, Section 1 of PA 302 of 1945 allows the Governor to proclaim a state of emergency "during times of great public crisis, disaster, rioting, catastrophe, or similar public emergency" within Michigan.

The Governor derives the authority for the remaining orders from those same acts, namely Section 3 of the EMA, which provides (in pertinent part), that the Governor may "issue executive orders, proclamations, and directives having the force and effect of law to implement" the EMA, and Section 1 of PA 302 of 1945.<sup>1</sup>

## **Summary of Order Contents**

### Executive Order 2020-4

Executive Order 2020-4 declares a state of emergency across the State of Michigan. The Emergency Management and Homeland Security Division (EMHSD) of the Michigan State Police (MSP) must coordinate and maximize State efforts that could be activated to assist local governments and officials, and may call upon all State departments to use available resources to assist. The state of emergency is terminated when emergency conditions no longer exist and appropriate programs have been implemented to recover from the effects of the emergency conditions.

### Executive Order 2020-7

Effective March 14, 2020, and continuing through April 5, 2020, at 5:00 PM, all health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities must prohibit from entering those facilities visitors who:

- 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 old or younger and who is under the facility's care.
- Are not visiting an individual under the facility's care who is in serious or critical condition or in hospice care.
- Are not visiting under exigent circumstances or to perform an official governmental function.

Beginning as soon as possible, but no later than March 16, 2020, at 9:00 AM and continuing through April 5, 2020, at 5:00 PM, all of the facilities listed above must perform a health evaluation of all individuals who are not under the care of the facility each time they seek to enter the facility, and must deny entry to those who do not meet the evaluation criteria. The evaluation criteria must include symptoms of respiratory infection (e.g., fever, cough, shortness of breath, or sore throat), and contact in the last 14 days with someone with a confirmed diagnosis of COVID-19.

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<sup>1</sup> Section 1 of PA 302 of 1945 specifically states that orders may designate specific zones within the area involved in the emergency in which occupancy and use of buildings and ingress and egress of persons and vehicles may be prohibited or regulated; control places of amusement and assembly and of individuals on public streets and thoroughfares; establish a curfew; and control the sale, transportation, and use of alcoholic beverages and liquors, among other things.

The Order rescinds Executive Order 2020-6.

#### Executive Order 2020-11

This Executive Order rescinds EO 2020-5, which imposed restrictions on assemblages and events. Beginning on March 17, 2020, at 9:00 AM, and continuing through April 5, 2020, at 5:00 PM, all assemblages of more than 50 people in a single indoor shared space or events of more than 50 people are prohibited in Michigan. A single indoor shared space includes a room, hall, cafeteria, auditorium, theater, or gallery. The prohibition does not apply to:

- Health care facilities.
- Workplaces or portions thereof not open to the public.
- The State Legislature.
- Assemblages for mass transit, the purchase of groceries or consumer goods, or the performance of agricultural or construction work.

These prohibitions do not abridge protections guaranteed by the State or Federal Constitution.

Beginning March 16, 2020, all elementary and secondary school buildings must be closed to students for educational purposes through April 5, 2020. This requirement applies to public, nonpublic, and boarding schools, but does not extend to residential facilities and childcare providers at schools.

#### Executive Order 2020-12

Effective March 16, 2020, and continuing through April 13, 2020, at 11:59 PM, all State and local seasonal load restrictions are suspended for deliveries that meet immediate needs for people, supplies, and equipment (specified below). For the same period, all State and local road agencies must exercise their authority on an expedited basis to issue permits that allow nonseasonal load restrictions to be exceeded. The permits must reflect bridge weight tolerances and they must apply to deliveries that meet the immediate needs described below.

Also, for the time period described above, all State and local restrictions on the noise and timing of loading and deliveries are suspended for loading and deliveries that meet immediate needs for COVID-19-related equipment and supplies.

The EO applies to deliveries that meet immediate needs for the following:

- Medical supplies and equipment related to the testing, diagnosis, and treatment of COVID-19.
- Supplies and equipment necessary for community safety, sanitation, and the prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap, and disinfectants.
- Food for the emergency restocking of stores.
- Equipment, supplies, and people necessary to establish and manage temporary housing, quarantine, and isolation facilities related to the COVID-19 emergency.
- People designated by Federal, State, or local authorities for medical, isolation, or quarantine purposes.
- People necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 emergency.

### Executive Order 2020-13

Department of Health and Human Services. The Order, effective immediately and continuing through April 14, 2020, at 11:59 PM, authorizes the DHHS to issue an emergency certificate of need (CON) and defer strict compliance with the statutory CON requirements. This would allow for expansion of capacity, in particular for hospital beds, which usually is tightly regulated under Parts 201 (General Provisions) and 222 (Certificates of Need) of the Public Health Code.

Department of Licensing and Regulatory Affairs (LARA). Under the Order, for the same period specified above, LARA may issue a waiver under Section 21564 of the Public Health Code for licensure requirements for a licensed hospital to allow the construction, acquisition, or operation of a temporary or mobile health facility for the purpose of providing care during the COVID-19 emergency. (Section 21564 allows the Department to issue a waiver from strict compliance upon request from a hospital with fewer than 100 beds in a nonurbanized area.) The Order applies to regardless of number of beds or location.

In addition, LARA may issue a temporary registration as a certified nurse aide to an applicant, regardless of whether he or she has satisfied the examination requirements. These temporary registrations are valid for 28 days following the date of issue. The Department may renew the registration until the state of emergency declared under Executive Order 2020-4 is terminated. The Order also allows LARA to renew licenses issued under Parts 170 (Medicine), 172 (Nursing), 175 (Osteopathic Medicine and Surgery), 177 (Pharmacy Practice and Drug Control), or 187 (Respiratory Care) of the Public Health Code, regardless of whether the licensee has satisfied the applicable continuing education requirements, and recognizes hours spent working responding to the COVID-19 emergency towards those requirements.

The Order allows nonnursing assistants and volunteers to feed or transport patients and residents. The activity must be performed in accordance with the care plan prescribed to the patient or resident.

### Executive Order 2020-14

The Order specifies that strict compliance with Section 78g(3) of the General Property Tax Act is temporarily suspended, and directs that the deadline by which property forfeited to a county treasurer must be redeemed is extended from March 31, 2020, until the later of May 29, 2020, or thirty days after the termination of the state of emergency. (Section 78g(3) generally allows certified abandoned or delinquent property forfeited to a county treasurer to be redeemed on or before the March 31 immediately after the entry of a judgment foreclosing the property.)

It also encourages the State Court Administrative Office to urge circuit court judges to amend foreclosure orders consistent with the deadline extension. The Order will be in effect until the later of May 29, 2020, or thirty days after the termination of the state of emergency, unless rescinded earlier.

### Executive Order 2020-15

Effective on March 18, 2020, and continuing until April 15, 2020, at 11:59 PM, to the extent that the Open Meetings Act (OMA) requires a meeting of a public body to be held in a physical space 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 OMA is temporarily suspended to alleviate any

physical-place or physical presence requirements, as described below. (Section 3 of the Act requires all meetings of a public body to be open to the public and, among other things, requires all individuals to be permitted to attend those meetings except as otherwise specified in the Act.)

The EO allows a meeting of a public body to be held electronically, including by telephonic conferencing or video conferencing, in a manner that allows both the general public and members of the body to participate electronically.

A meeting held electronically is subject to the following conditions:

- The meeting must be held in a manner that allows two-way communication so that members of the public body can hear and be heard by other members and so that the general public participants can hear members of the public body and be heard by members and other participants during a public comment period.
- Members of the public body and of the general public participating electronically will be considered present and in attendance and may participate as if physically present at the meeting.
- All individuals must be allowed to participate, except as otherwise provided in the Act.
- If a public body directly or indirectly maintains an official internet presence, the body must post advance notice of a meeting held electronically (with the information prescribed in the Order) on a portion of the body's website fully accessible to the public.
- The right of a person to participate in a meeting electronically includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting, consistent with OMA.
- A public body may not require a person to register or otherwise provide his or her name or other information as a condition of participation, other than mechanisms necessary to permit the person to participate in the public comment period of the meeting.
- A person must be permitted to address a meeting under the rules established and recorded by the public body and may not be excluded except for a breach of the peace committed during the meeting.
- Members are urged to take all votes by roll call to avoid questions about how each member votes.
- If the public body directly or indirectly maintains an internet presence, it is encouraged to make an agenda and other materials related to the meeting available to the general public through its website homepage.
- The general public may be excluded from a closed session of a public body, if the closed session is convened and held in compliance with OMA.
- Members of a public body must avoid using email, texting, instant messaging, and other forms of electronic communication to deliberate or make a decision during a meeting, or use "round-the-horn" decision-making in a manner not accessible to the public during and open meeting.

If a decision or other action of a public body is in compliance with the Executive Order and the other requirements of OMA, it is in compliance with OMA. If a statute or rule other than OMA requires that public comments be permitted, or a public hearing held, a public body or agency may provide a means for remote public comment or participation to facilitate participation by the general public to the same extent as if the member of the public appeared in person. If not expressly authorized by statute or rule, written comment also is permitted. Also, during the period of the Order, school district boards are not required to hold meetings at least once a month.

Nothing in the executive order permits a public body to limit or restrict the rights of the press or other news media.

The terms "decision", "meeting", and "public body" mean those terms as defined in Section 2 of OMA (except the order does not apply to State legislative bodies).

A provision of the order will prevail over any conflicting provision of a local charter, ordinance, or rule. The order supersedes Sections 2 and 3 of Executive Directive 2020-2, which relates to access to meetings of public bodies and agencies subject to OMA.

#### Executive Order 2020-16

Effective March 19, 2020, and continuing until April 15, 2020, at 11:59 PM, the Order suspends certain requirements pertaining to child care organizations and allows for the establishment of disaster relief child care centers. Executive Order 2020-16 will allow LARA to issue provisional licenses for child care organizations under terms that differ from those found in statute. While the Order will expire April 15, 2020, at 11:59 PM, LARA is authorized to renew provisional licenses until the termination of the state of emergency declared under Executive Order 2020-4.

Child Care Organizations. Executive Order 2020-16 suspends strict compliance with Section 7a of Public Act 116 of 1973 (which governs the licensing and regulation of child care organizations). Under the Act, a new child care organization is granted an original license for six months. At the end of that period, the organization receives either a regular license or, if adjustments are required, a provisional license. The EO authorizes LARA to issue a provisional license to a child care organization without the organization's having to submit a plan to overcome the deficiencies that resulted in the failure to receive a regular license.

Under the Act, provisional licenses expire six months after issuance and may be renewed up to three times. The EO grants the Department the authority to set an expiration date between one and six months following the date of issuance, and the authority to renew those licenses until the state of emergency declared under Executive Order 2020-4 ends.

Disaster Relief Child Care Centers. The Order temporarily suspends the child care organization licensure requirement for employers and schools seeking to establish disaster relief child care centers. A disaster relief child care center is defined as any child care center providing child care services pursuant to the Executive Order. The EO requires a center to prioritize serving essential workers, including health workers, sanitation workers, law enforcement personnel, child care workers, and various government employees.

The Department is required to promulgate rules and guidelines governing the establishment and operation of these centers. A center must comply with any orders issued by the Department. The Executive Order requires the rules to address certain areas of concern related to child care and sanitary practices.

Under the Executive Order, disaster relief child care centers are not required to comply with Rule 400.8110(5) of the Michigan Administrative Code (which limits the number of children in a facility). However, changes in capacity or age groups must be reported to the Department.

Executive Order 2020-16 temporarily allows disaster relief child care centers to operate in school districts and allow the use of employees from the school district. All individuals who enter a center would be required to pass a health evaluation that included no symptoms of a respiratory infection, contact within the last 14 days with someone with a confirmed diagnosis of COVID-19. The Department of Education would be authorized to credit hours that student teachers work at disaster child care centers towards teaching credit requirements for graduation and licensure requirements. The Executive Order allows disaster relief child care centers to charge for reasonable and customary services.

#### Executive Order 2020-18

Executive Order 2020-18 rescinds Executive Order 2020-8, which imposed restrictions on the excessive pricing of goods, materials, emergency supplies, and consumer food items. Executive Order 2020-18, effective March 23, 2020, and continuing until April 17, 2020, at 11:59 PM, specifies that if a person has acquired any product from a retailer, the person may not resell it in Michigan at a price that is grossly in excess of the purchase price at which the person acquired it.

During the same period, a person may not offer for sale or sell any product in Michigan 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 demonstrates that the price increase is attributable to an increase in the cost of bringing the product to market or to an extraordinary discount in effect on that date.

"Product" means any good, material, or consumer food item with a fair market value of less than \$1,000, or any emergency supply.

The EO does not limit or impair the ability of the Attorney General to investigate, determine, or impose liability under the Michigan Consumer Protection Act or any other State law.

#### Executive Order 2020-20

This EO rescinds Executive Order 2020-9, which imposed temporary restrictions on the use of places of public accommodation. Executive Order 2020-20 specifies that, beginning by no later than March 22, 2020, at 9:00 AM, and continuing until April 13, 2020, at 11:59 pm, the following places of public accommodation are closed to ingress, egress, use, and occupancy by members of the public:

- Restaurants, cafes, coffeehouses, and other places offering food or beverage for on-premises consumption.
- Bars, taverns, brewpubs, wineries, and other places of public accommodation offering alcoholic beverages for on-premises consumption.
- Hookah bars, cigar bars, and vaping lounges offering their products for on-premises consumption.
- Theatres, cinemas, and indoor and outdoor performance venues.
- Libraries and museums.
- Gymnasiums, fitness centers, recreation centers, indoor sports facilities, indoor exercise facilities, exercise studios, and facilities offering nonessential personal care services.
- Casinos, racetracks, and millionaire parties licensed by the Michigan Gaming Control Board.
- Places of public amusement not otherwise listed above.

Places of public accommodation listed above are encouraged to offer food and beverage using delivery, window, walk-up, drive-through, or drive-up services, and to use precautions in so doing to mitigate the potential transmission of COVID-19. The above-listed public accommodations may permit up to five members of the public at any one time in that place to pick up orders, so long as they are at least six feet apart from one another while on the premises.

The restrictions do not apply to any of the following:

- Places of public accommodations that offer food and beverage not for on-premises consumption, including grocery stores, markets, convenience stores, pharmacies, drug stores, and food pantries, other than those places subject to the restriction describe above.
- Health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities.
- Crisis shelters or similar institutions.
- Food courts inside the secured zones of airports.

"Nonessential personal care services" include tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services that require individuals to be within six feet of each other. The term does not include services necessary for medical treatment as determined by a licensed medical provider.

#### Executive Order 2020-24

Executive Order 2020-24 suspends strict compliance with Section 29(a)(1) of the Michigan Employment Security Act as described below. (Under Section 29(1) of the Michigan Employment Security Act (MCL 421.29), individuals are disqualified from receiving benefits for a verity of reasons including: voluntarily leaving work without good cause and being absent for three consecutive work days without contacting the employer. Additionally, the subsection requires medical professional approval to be classified as leaving work involuntarily for medical reasons.)

The individual must be considered to have left work involuntarily for medical reasons if he or she leaves work, or may be deemed laid off if he or she becomes unemployed, because he or she self-isolates or self-quarantines in response to elevated risk from COVID-19, displays the symptoms of COVID-19, has contact in the last 14 days with a confirmed diagnosis of COVID-19, has the need to care for someone with a confirmed diagnosis, or has a family care responsibility as a result of a government directive.

The Order suspends strict compliance with Section 48(3) of the Act. An individual on a leave of absence for the reasons listed above must be considered unemployed unless he or she is already on sick leave and receives a disability benefit. (Under Section 48(3), an individual may not be considered unemployed during any leave of absence from work granted by an employer either at the request of the individual or pursuant to an agreement with the individual's duly authorized bargaining agent, or in accordance with law.)

Strict compliance with Section 27(d) is suspended. An eligible individual who files an initial claim as of the effective date of the Order will receive for up to 26 weeks of benefits payable in a benefit year. (Section 27(d) of the Act specifies that eligible individuals filing initial claims after January 15, 2012, to not more than 20 weeks of benefits payable to individuals within a benefit year.)

The Order allows those individuals who qualify for unemployment under this Executive Order to file initial claims for unemployment benefits within 28 days of the last day worked, and have those claims considered to be filed on time.

The Order suspends strict compliance with Section 28c(1) of the Act (MCL 429.28c(1)). The Unemployment Insurance Agency may approve an employer's participation in a shared-work plan upon application by the employer, regardless of whether the employer has been the requirements of MCL 429.28c(1). (Section 28c(1) prescribes the requirements that an employer must meet to apply for approval of a shared-work plan.)

Finally, employers will be charged for unemployment benefits to the State's nonchargeable account if their employees become unemployed due to an executive order requiring them to close or limit operations until April 14, 2020.

The Order rescinds Executive Order 2020-10, and specifies that it is retroactive to March 16, 2020. Executive Order 2020-24 expires on April 22, 2020, at 11:59 PM.

### Violations of Orders

Executive Orders 2020-7, 2020-11, 2020-12, 2020-16, 2020-18, 2020-20, and 2020-24 specify that, consistent with Section 3 of PA 302 of 1945 (MCL 10.33) and Section 5(3) of the EMA (MCL 30.405(3)), a willful violation of these orders is a misdemeanor.

Section 3 of PA 302 of 1945 specifies that a violation of an order, rule or regulations made in conformity with the Act is punishable as a misdemeanor, when it states that a violation constitutes a misdemeanor. Section 5(3) of the EMA states that a person who willfully disobeys or interferes with the implementation of a rule, order, or directive issued by the Governor pursuant to Section 5 of EMA is guilty of a misdemeanor. Under Section 504 of the Michigan Penal Code, if a person is convicted of a crime under State law designated as a misdemeanor for which no punishment is prescribed, the violation is punishable by up to 90 days' imprisonment or a fine of up to \$500, or both.

### **Fiscal Impact**

#### Overview

The Executive Orders will have a substantial fiscal impact, immediately and in the near future. Some of these impacts will be absorbed by existing appropriations, while others may require additional appropriations in the future. For orders that prescribe a misdemeanor penalty for a violation, each may have a negative fiscal impact on the State and local governments. New misdemeanor arrests and convictions may increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people will be prosecuted for a violation. Any additional revenue from imposed fines will go to local libraries.

#### Executive Order 2020-4

Once a Governor declares a state of emergency, MSP's EMHSD takes the lead in coordinating local, State, Federal, and nongovernmental resources, the authority for which comes from the EMA. The EMHSD then activates the State Emergency Operations Center (SEOC), located at the State's Secondary Complex in Dimondale, Michigan. There, personnel monitor (on a 24-hour

basis) ongoing emergencies, communicate with affected jurisdictions and government agencies, and assess and coordinate requests for resources and assistance, either from state or federal sources.

Immediately after the Governor's declaration, the SEOC is staffed by personnel representing each State agency involved in protecting public health and safety, and in responding to and recovering from, a State emergency. In the first days following the issuance of EO 2020-4, most, if not all, of the 18 State departments participated on-site at the Center to coordinate the State's response. Recently, in view of virus concerns, many departments are coordinating efforts with the SEOC on a remote basis. As expected, the DHHS has a major role in the State response, along with others, including the Department of Military and Veterans' Affairs (the Michigan National Guard), the Department of Corrections, and many others, especially those departments that have facilities that the public could visit.

The overall costs as a result of the Governor's EO 2020-4 cannot easily be determined, as it gives the Governor broad powers to order departments to engage in certain tasks and responsibilities that likely will go well beyond their current appropriations. This is considering only year-to-date costs without speculating how long the State will be in emergency status, and what the next few weeks and months will bring in terms of necessary responses by the State. Unforeseen emergency needs could occur in the future, such as the need to respond to civil unrest, or a dramatic statewide increase in COVID-19 infections. State employees who have been designated to represent their departments at the SEOC after a state of emergency is declared have their salary costs placed in a separate State account, distinct from their department accounting, for the purpose of paying these costs separately with emergency appropriations.

Paying the salary costs of these employees who serve within the SEOC, and other statewide costs created by the Governor's subsequent orders could come from several sources. These include the following: supplemental State appropriations from Public Act 66 of 2020 (\$25.0 million General Fund/General Purpose (GF/GP) for coronavirus response); Public Act 67 of 2020 (\$125.0 million GF/GP for coronavirus response); supplemental Federal appropriations and allocations that provide financial assistance to states (initial Federal supplemental appropriations and allocations have provided \$15.3 million to Michigan, with additional support forthcoming); \$9.5 million of State restricted revenue from the current balance of the State's Disaster and Emergency Contingency Fund, for use during State emergencies (these funds often are used to provide local or State matching funds for Federal funds); Federal Emergency Management Agency (FEMA) reimbursement funds available under the Stafford Act (a significant source of potential financial support as, with the declaration of a State emergency, followed by a Federal declaration, Federal funds become available to reimburse states for reasonable costs in addressing an emergency, typically on a 25% state/75% Federal match).

#### Executive Order 2020-7

There are two main requirements listed under Executive Order 2020-7. First, a reduction in the types of visitors who are allowed into facilities; second, for those individuals who meet the enhanced screening criteria, a health evaluation upon entry. These requirements apply to: health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities. When determining the fiscal impact to the State and local units of government, it is necessary to ascertain which of these types of facilities, in fact, are operated by the State or local units of government and thus may realize a direct increase in operating costs.

Currently, the State operates five inpatient psychiatric hospitals: Caro Center, Center for Forensic Psychiatry, Hawthorn Center, Kalamazoo Psychiatric Hospital, and Walter Reuther Psychiatric Hospital. These five facilities are covered under the "health care facility" portion of the order. The State also operates two juvenile justice facilities: Bay Pines Center and Shawono Center. The University of Michigan Health System operates hospitals that can be considered State-operated health care facilities. Additionally, there are many local units of government, mostly counties, that operate many of these types of facilities, so any cost increase needed to implement this order will be borne by the facility's local funding entity.

Leaving health care facilities aside, the remainder of the facility types covered under the order likely already have existing secured entry processes, so any enhanced screening criteria for visitors likely will not increase costs. However, to the extent that State and locally operated facilities require additional medical diagnostic tools to evaluate for fever or other symptoms, there will be a cost to State government and local units of government. For health care facilities, it is possible that the new entrance policy requirements will require new infrastructure or staffing requirements to ensure that visitors comply with them. Outside of health care facilities run by the University of Michigan health system, there will be no direct cost to State government. For health care facilities operated by local units of government, there will be additional costs.

Also, there are numerous non-State managed health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities that operate under contracts with State and local units of government. As these facilities are not under direct State management, these costs are not direct costs to the State or local units of government, but to the extent that these costs will be recovered through future contract or service rate increases, there will be an indirect cost to State and local units of government.

#### Executive Order 2020-11

Under Section 101(3) of the State School Aid Act (MCL 388.1701(3)), public school districts must provide at least 180 days and 1,098 hours of pupil instruction to receive full State aid payments. If a district does not meet the minimum required number of days and hours, it is penalized the proportion of its total State aid payment represented by the amount of days and hours of instruction not provided as a percentage of the minimum requirements. For example, if a district provided 175 days of instruction, the district would be penalized  $5/180$  (or 2.8%) of the district's total State aid payment.

Section 101(4) does allow up to six days (or the equivalent number of hours) of instruction to be counted automatically for events like snow days, severe storms, fires, epidemics, power outages, water or sewer failure, or health conditions. In addition, the Section allows the Department of Education to count up to three additional days (or the equivalent number of hours) if instruction is not provided because of unusual and extenuating circumstances resulting from conditions not within the control of school authorities.

Districts are required to certify by August 1 whether the minimum number of days and hours of instruction were met or report the amount of any shortfall. The Department of Education is required to calculate the amount of State aid to be forfeited, and to deduct that amount with the first State aid payment of the following fiscal year.

Section 101 of the Act also requires the submission of pupil membership counts at various times prescribed in the section. Subsection (1) requires the submission of the number of pupils enrolled

as of the supplemental count day (which occurred February 12, 2020) not later than the fifth Wednesday after the count day (which was March 18, 2020). The subsection also requires districts, not later than the sixth Wednesday after the supplemental count day (which was March 25, 2020) to resolve any pupil membership conflicts with other districts, correct the issues, and recertify the data. Under the Act, if a district fails to submit this information by the respective deadlines, the Department is required to withhold State aid immediately, beginning with the next payment (which would occur April 20, 2020).

Subsection (2) requires the submission by an intermediate district of audited enrollment and attendance data not later than the 24th Wednesday after the count day (which occurred October 2, 2019, and which was required to be submitted by March 18, 2020) and not later than the 24th Wednesday after the supplemental count day. If an ISD fails to submit the data, the Department is required to withhold State aid for the ISD beginning with the next State aid payment.

The fiscal impact to school districts from EO 2020-11 is indeterminate, but likely negative. If districts and intermediate districts have not yet submitted pupil membership data and now are not able to do so, the statute requires the Department to withhold State aid payments until data are submitted. The likely larger fiscal impact involves whether districts are able to either make up days and hours of instruction lost because of EO 2020-11, or whether those days and hours during which pupil instruction is not allowed to occur can be counted as instructional time. Under current statute, up to nine days may be counted as instructional days (six automatically, three with approval by the Department), though it is likely at least a portion of those days already have been used by districts for things like snow days, leaving fewer than nine to be counted toward the time closed due to EO 2020-11.

If districts are required to add instructional time to avoid financial penalties, they will face some costs related to keeping buildings open longer than planned, as well as paying hourly and contracted workers for working those additional days. If districts have chosen to continue to pay hourly workers during the period of school closure required under EO 2020-11 and then lengthen the school year to meet days and hours requirements for full State aid payments, they will incur additional costs to pay hourly workers for time worked during the longer school year.

To the extent contracts with salaried workers (including teachers) specify that no additional compensation would be provided for additional days of instruction, schools would not see any increased costs for that component of total expenditures. To the extent contracts with salaried workers specify additional compensation, then schools would face higher costs associated with lengthening the school year to make up for lost instructional days.

#### Executive Order 2020-12

Executive Order 2020-12 will have an indeterminate negative fiscal impact on State and local units of government. The suspension of seasonal and nonseasonal load restrictions on State and local roads negatively affects State and local units of government in two ways.

First, increased weight loads on commercial vehicles will result in increased damage to State and local roadways. The degree to which the damage will increase cannot be quantified. It is limited to the amount of additional overweight trucks necessarily related to the COVID-19 emergency.

The suspension of certain load restrictions also will negatively affect permit fee revenue for State and local units of government. Again, the negative fiscal impact is limited to the scope of the

COVID-19 emergency. The exact fiscal impact on State and local units of government is indeterminate. Current law sets the State's overweight permit fees (and limits local road agency overweight permit fees) at \$50 for a single overweight load and at \$100 for an annual permit that may be used for multiple overweight loads. For the State, overweight and oversize permit fee revenue was at \$4.6 million in 2017. Although the EO requires local agencies to expedite the issuance of overweight permits to exceed nonseasonal load restrictions, it does not specify that local agencies may not charge a fee for those expedited permits.

#### Executive Order 2020-13

The lifting of restrictions on expanding the number of hospital beds likely will lead to the availability of more beds, many of which presumably will be filled. This expansion will allow more people suffering from COVID-19 infection and other serious conditions to receive appropriate treatment, whether in an intensive care unit or other hospital setting. This greater capacity also will allow more people to recover fully and likely will reduce the number of deaths from COVID-19. As such, the greater availability of necessary treatment settings will lead to more people being treated in the appropriate setting (with more extensive services), which will lead to increases in medical expenditures.

The Department of Licensing and Regulatory Affairs does not expect Executive Order 2020-13 to have a significant fiscal impact. The cost of monitoring temporary licenses likely will be covered by existing appropriations and resources.

#### Executive Order 2020-14

The Executive Order will have an indeterminate fiscal impact on local governments and likely will have a negligible negative fiscal impact on the State. In any case that a foreclosure is delayed, it will delay the realization of revenue for the local unit that foreclosed. However, if the delay allows the taxpayer to redeem the property, the cost of foreclosure will be avoided. Whether the provisions result in a net gain or loss to the local unit will depend on the amount of delinquent taxes owed and the characteristics of each individual property. Any additional administrative costs for county treasurers or the State Court Administrative Office will be minimal and will be absorbed under existing appropriations.

#### Executive Order 2020-15

The executive order will have an indeterminate, though likely minor, fiscal impact on State and local government. The provision to hold meetings remotely is optional; therefore, any costs or savings will depend on the actions of individual departments and public bodies. Public bodies required to reimburse members for the cost of attending meetings may have fewer costs if members do not have to travel to the meetings. However, there may be additional costs related to the upgrade or purchase of the technology required to conduct the meetings. Any additional administrative costs related to notices is expected to be minor and will be handled within existing appropriations.

#### Executive Order 2020-16

The Executive Order will have an indeterminate but likely negative fiscal impact on the Department of Licensing and Regulatory Affairs. The cost of administering provisional child care organization licenses is unknown. It is likely that existing appropriations and staffing levels will be

sufficient to cover the costs of this activity. However, as the volume of cases is unknown, it is possible that LARA may incur additional costs that the Department is unable to predict at this time.

Although the Executive Order suspends licensure requirements, it is unlikely that this will result in any long-term revenue loss. Existing child care organizations will not be affected. Centers operating under the conditions set forth in the Executive Order will be required to attain normal licensure in order to continue operations following the emergency period. The revenue collected from license application and renewal fees is used to administer the licensing programs.

The EO also requires the Department to promulgate rules regarding disaster relief child care centers. This activity will be funded sufficiently by existing appropriations.

The Executive Order will have a minimal fiscal impact on the Department of Education. Additional costs may come from tracking credit hours for student teachers for graduation and licensure requirements. These costs likely will be minimal and within current appropriations.

The Executive Order will have an indeterminate fiscal impact on school districts that operate disaster relief child care centers. The fiscal impacts will include the typical costs of operating a child care center, in addition to performing health assessments on individuals who enter a center. This may lead to additional administrative costs for centers. District will be able to charge for child care services for reasonable and customary services. These charges should be sufficient to cover the additional costs to operate disaster relief child care centers in school districts.

#### Executive Order 2020-20

The Executive Order likely will have a minor negative fiscal impact on the Department of Licensing and Regulatory Affairs.

Currently, the Bureau of Fire Services has 24.0 FTEs, twenty fire inspectors and four supervisors, available to devote to monitoring closures of places of public assembly included in the Executive Order. These inspectors will respond to complaints received from individuals regarding the failure of businesses or other entities to follow the Order's requirements. However, these FTEs also must continue to perform routine inspections. The Department has noted that current resources are insufficient to conduct as many inspections as are currently required of its employees. To fulfill its statutory obligations and address the closures and limitations under Executive Order 2020-20, the Department may incur significant overtime costs.

Additional FTEs from the Michigan Liquor Control Commission and other entities also may be used for monitoring and complaint response, according to the nature of the business in question.

The Department does not expect a significant change in its licensing revenues.

Executive Order 2020-20 also will have a negative fiscal impact on the State and City of Detroit. Closing the three casinos in Detroit will reduce revenue to the School Aid Fund and City of Detroit. The three-year, average monthly revenue received by the State and City of Detroit in March was \$11.1 million to the State and \$16.3 million to the City of Detroit. With the Order going into effect on March 16, the negative fiscal impact will be at least half the average monthly revenue. Casino revenue represents 0.8% of the total revenue received by the School Aid Fund, which means that the loss of revenue will be minor in relation to the total School Aid Fund. Casino revenue

represents about 14% of the total general fund revenue received by the City of Detroit, which means that the loss of revenue will be more significant to the City.

The Order may have a negative fiscal impact on the Michigan Gaming Control Board. The Board may experience a loss of revenue in the form of reduced application and licensing fee revenue because of closing the three casinos in Detroit, horse racing, and Millionaire Parties. In particular, Millionaire Party regulation is entirely reliant on the fees charged to millionaire parties for gaming events.

The Department of Health and Human Services will incur minor administrative costs resulting from the dissemination of information to the public, and places of public accommodation and public amusement. The Department estimates these costs to be approximately \$450,000 with \$250,000 for statewide outreach and education, and the remaining \$200,000 for a public media campaign.

The Order will reduce State tax revenue, particularly from individual and corporate income taxes and the sales tax, by an unknown amount that will depend on how long and the degree to which individuals continue to receive pay, qualify and receive unemployment or otherwise maintain income levels, draw down savings or maintain consumption, work from home, and the degree to which any changes result in prolonged or permanent changes in employment or other financial conditions. Given the magnitude of economic activity affected by the Executive Order, the revenue reductions could be significant and would affect revenue in both FY 2019-20 as well as FY 2020-21 (when annual payments are due and/or reconciled).

#### Executive Order 2020-24

Executive Order 2020-24 will have a negative fiscal impact on the Unemployment Insurance Agency and the Michigan Unemployment Trust Fund. The Unemployment Insurance Agency will experience additional administrative costs to implement necessary changes to the administrative procedures and Information Technology Systems, which are one-time costs. The Agency may require additional staff and administration to process the additional claims from eligible individuals because of Executive Order 2020-24 and the closure of businesses as a result of other executive orders. These costs may extend beyond April 14, 2020, as benefits will be paid out for up to 26 weeks and compliance with various reporting requirements over that time will have to be tracked.

Executive Order 2020-24 and the other executive orders closing certain businesses will have a significant negative impact on the Michigan Unemployment Trust Fund. In calendar year 2019, around 214,000 individuals received benefits with an average of 47,200 weekly payments made each week. The Unemployment Trust Fund had a fund balance above \$4.6 billion at the end of 2019.

The Unemployment Insurance Agency projects an increase of 14% in total benefit payments because of EO 2020-24's extension of benefit payments from 20 weeks to 26 weeks. This will bring the projected payments made in calendar year 2020 from \$760.0 million to \$870.0 million.

Allowing additional individuals to qualify to receive unemployment benefits will result in additional payments from the Michigan Unemployment Trust Fund. The number of individuals who may self-isolate or self-quarantine because of COVID-19 and qualify for unemployment insurance benefits under Executive Order 2020-24, currently is indeterminate. Additionally, it currently is indeterminate how many employees will become laid off because of business closures and

reductions. Since the Order does not charge unemployment insurance payments to businesses with employees who become unemployed because of these executive order, additional claimants will be a total loss to the Unemployment Trust Fund. In calendar year 2019, claimants received benefits for an average of 11.3 weeks with an average weekly payment of \$315. Statute allows individuals to received up to \$362 in weekly benefits depending on their previous quarterly earnings and the number of dependents in the household. This means that for every additional 100,000 individuals who receive unemployment insurance benefits, the Fund will pay out an additional \$31,500,000 to \$36,500,000 for each week those individuals are unemployed or unable to work.

In 2019, Michigan had approximately 4.4 million wage and salary employees, including 473,000 in durable goods manufacturing, 381,000 in food services and accommodations, and 464,000 in retail trade. If 500,000 of these employees become unemployed (as opposed to having reduced hours) and are affected by COVID-19-related measures, the Fund will pay out an additional \$157.5 million to \$182.5 million per week while these employees are unemployed.

### **Conclusion**

Executive Orders 2020-4, 2020-7, 2020-11 through 2020-16, 2020-18, 2020-20, and 2020-24 declare a state of emergency in Michigan in response to the outbreak of COVID-19. The Executive Orders will have a fiscal impact on State revenue, and on various State departments, including the DHHS, MSP, LARA, and the Department of Education.

If you have any questions regarding these Executive Orders, please do not hesitate to contact us.

/lms

c: Chris Harkins, Director