

**SENATE FISCAL AGENCY
 MEMORANDUM**

DATE: April 29, 2020

TO: Members of the Michigan Senate

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

RE: Coronavirus Disease 2019 (COVID-19) Executive Orders 2020-36 through 2020-51

Overview

On April 3, 2020, through April 15, 2020, Governor Whitmer issued Executive Orders (EOs) 2020-36 through 2020-51 to implement various measures in response to COVID-19 in Michigan. These measures affect, among other things, health care and child care facilities, Freedom of Information Act requests, emergency medical services, various licensing and permitting fees, electronic transactions and notarial services, the operations of places of public accommodation, and meetings of public bodies.

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 cause 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 April 28, 2020, the DHHS has reported 38,234 cases and 3,566 deaths attributable to COVID-19.

Authority for Orders

Executive Order 2020-33, which continues the state of emergency and state of disaster in response to the COVID-19 pandemic, 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 EMA, 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 subsequent 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 1945.¹

Summary of Order Contents

Executive Order 2020-36

Effective April 3, 2020, and continuing until the end of the declared state of emergency, the Order prohibits an employer from discharging, disciplining, or otherwise retaliating against an employee who tests positive for COVID-19, displays one or more symptoms of COVID-19, or has close contact with an individual who tests positive to COVID-19 or displays one or more symptoms. Additionally, this prohibition applies to an employee described above who fails to comply with a requirement to document that he or she has COVID-19 or has had close contact with an individual who has COVID-19.

The Order requires employers to treat these employees as if they have taken medical leave under the Paid Medical Leave Act. Employers are permitted to debit the hours that an employee has taken under leave of absence under this Order if he or she has no paid leave. The length of leave under the Order is not limited to the amount of leave an employee accrued under the Paid Medical Leave Act, whether paid or unpaid, if the employee remains away from work within the time periods described under the Order.

The Order does not prevent an employer from discharging or disciplining an employee who is allowed to return to work under the Order but declines to do so or any other reason that is lawful.

The Order authorizes the Director of the Department of Labor and Economic Opportunity to enforce the Order and to refer all credible complaints to relevant licensing authorities.

The Order states that it is the public policy of the State that individuals who test positive for COVID-19, or who display one or more principal symptoms of COVID-19, should remain home or in a place of residence until three days have passed since their symptoms have resolved, and seven days have passed since their symptoms first appear or since they were swabbed for a positive test. The Order ceases to apply to anyone who, after showing symptoms, receives a negative COVID-19 test result.

The Order states that it is the public policy of the State that individuals who have had close contact with an individual who tests positive or with an individual who displays one or more principal symptom of COVID-19 should remain in their home or place of residence until 14 days have passed since the last contact or the symptomatic individual receives a negative COVID-19 test. The Order does not apply to health care professionals, workers at a health care facility, first responders, child protective service employees, workers at child caring institutions, and workers at correctional facilities, provided that their employers' rules governing occupational health allow them to go to work.

¹ 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 people 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.

Individuals who return to work before the period specified in the Order are not be entitled to the protections against discharge, discipline, or retaliation provided under the Order.

The Order states that it is the public policy of the State that individuals described under the Order should leave their home or residence only to the extent absolutely necessary to obtain food, medicine, medical care, or supplies needed to sustain or protect life, or to engage in outdoor activities consistent with remaining at least six feet from people from outside their household.

The Order defines "the principal symptom of COVID-19" as a fever, atypical cough, or atypical shortness of breath and "close contact" as being within approximately six feet of an individual for a prolonged period of time.

Executive Order 2020-37

Effective April 5, 2020, and continuing through May 3, 2020, at 11:59 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.

The EO defines "residential care facilities" as including homes for the aged, nursing homes, adult foster care facilities, hospice facilities, substance abuse disorder residential facilities, independent living facilities, and assisted living facilities.

Beginning April 5, 2020, and continuing through May 3, 2020, at 11:59 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.

The Order also states that while the restrictions are in place, each facility must make best efforts to facilitate visitation with individuals under its care by phone or other electronic platforms to the fullest extent possible, consistent with normal visitation policies

The Order rescinds Executive Order 2020-7.

Executive Order 2020-38

The Order grants a temporary extension of certain deadlines related to Freedom of Information Act requests. It took effect on April 5, 2020, and will remain in effect through June 4, 2020, at 11:59 PM.

The Order states that a public body must respond in writing to a request or an appeal received at its physical office via mail, hand delivery, or fax within ten business days after actual receipt. "Actual receipt" occurs when an employee of the public body physically opens the envelope containing the request or physically takes the faxed request from the fax machine. The Order does not require an employee to report to the office to open mail or check the fax machine if he or she would not otherwise be permitted to report to the office and required to perform those tasks. Also, if COVID-19 or accompanying response efforts interfere with the timely response to a request or appeal, the public body may issue a notice extending the period of time to respond for as long as it deems necessary, but no longer than until the expiration of the Order or any order that follows from it.

If a public records request requires in-person efforts, the public body may defer that portion of the request until the expiration of the Order or any order that follows from it. If a public body defers a portion of a records request in this manner, the requestor may amend its request to exclude the deferred portion of the request so the public body may more promptly process the request.

Executive Order 2020-39

Effective April 7, 2020, and continuing until the end of the declared state of emergency, this Order pertains to licensing requirements for emergency medical services personnel and regulations of emergency medical services agencies. The Order also suspends strict compliance with current law and regulations to the extent they conflict with the authorizations outlined by the Order.

Annual Inspection Requirements. The Order temporarily suspends strict compliance with annual inspection requirements for life support vehicles and life support agencies under Section 20910(1)(e)(iii) of the Public Health Code. The Order requires the DHHS to inspect vehicles or agencies only when the Department believes the vehicle or agency is out of compliance, and requires the inspections to be conducted remotely, to the extent possible.

(Section 20910(1)(e)(iii) requires the Department to conduct, at least annually, a random inspection of life support vehicles to determine compliance and to give a life support agency 24 hours to bring a noncompliant vehicle back into compliance or have the vehicle taken out of service until compliance can be demonstrated.)

Ambulance Staffing Requirements. The Order temporarily suspends strict compliance with ambulance staffing requirements under Section 20921(3) of the Public Health Code to prohibit an ambulance from transporting a patient unless staffed with emergency medical services personnel meeting the following qualifications:

- If the ambulance is designated as providing basic life support, it must be staffed with at least one emergency medical technician and one medical first responder.
- If the ambulance is designated as providing limited advanced life support, it must be staffed with at least one emergency medical technician specialist and one medical first responder.
- If the ambulance is designated as providing advanced life support, it must be staffed with at least one paramedic and one medical first responder.

(Section 20921(3) prohibits an ambulance operation from transporting a patient unless staffed with one emergency medical technician and one medical first responder if designated as providing basic life support; with one emergency medical technician specialist and one emergency medical

technician if designated as providing limited advanced life support; or with one paramedic and one emergency medical technician if designated as providing advanced life support.)

Downgrade of Vehicle Life Support Level. The Order temporarily suspends strict compliance with Rules 325.22133(d) and 325.22143(d) of the Michigan Administrative Code to allow an ambulance operation or non-transport prehospital life support operation to downgrade the life support level of its vehicles without advising the DHHS from advanced life support to limited advanced life support or basic life support, and from limited advanced life support to basic life support. Any ambulance operation or non-transport prehospital life support operation that chooses to downgrade a vehicle must appropriately and securely store all advance level equipment and medications that should no longer be in the downgraded vehicle.

(Rule 325.22133(d) requires an ambulance operation to notify the Department of any change that alters the information contained on its licensure application, including a change in vehicle status. Rule 325.22143(d) requires a nontransport prehospital life support operation to advise the Department of any change that alters the information contained on its licensure application, including a change in vehicle status.)

Patient Transport. The Order temporarily suspends strict compliance with Rule 325.22112 of the Michigan Administrative Code to allow for the transport of a patient, emergency or nonemergency, to any destination designated by the medical control authority.

(Rule 325.22112 restricts transportation of an emergency patient to an organized emergency department.)

Verification of Ongoing Education Requirements. The Order temporarily suspends strict compliance with section 20954 of the Public Health Code and Rules 325.22321 to 325.22325 and 325.22336 to 325.22338 of the Michigan Administrative Code to allow DHHS to waive verification of ongoing education requirements when reviewing an emergency medical services personnel license renewal or relicensure application. This temporary suspension is limited to applicants that have been licensed by the Department within the last five years for a relicensure application.

(Section 20954 establishes license renewal procedures for emergency medical services personnel, renewal fees and late fees, and waiver of renewal fees for volunteers. Rules 325.22321 to 325.22324 establish the continuing education requirements for medical first responders, emergency medical technicians, emergency medical technician specialists, and paramedics respectively. Rule 325.22325 establishes acceptable documentation of continuing education and record retention requirements. Rule 325.22336 establishes the continuing education requirements for instructor-coordinators, while Rule 325.22337 establishes rules for license renewal or relicensure of instructor-coordinators, and Rule 325.22338 establishes acceptable documentation of continuing education and record retention requirements for instructor-coordinators.)

Licensure, Certification, and Notice of Intent Requirements. The Order requires that any emergency medical services personnel licenses or professional certifications in basic cardiac life support that have expired since March 10, 2020, or that will expire during the declared states of emergency and disaster be deemed unexpired and that they not expire until six months after the end of the declarations of emergency and disaster.

The Order temporarily suspends compliance with Sections 20961(1)(a) and (1)(d) of the Public Health Code to allow the Department to grant a license under Part 209 (Emergency Medical Services) to an applicant licensed in another state. The license may be granted without regard to if the applicant meets the requirements of the Public Health Code or the rules promulgated by DHHS, or if the state in which the applicant is licensed maintains equivalent or more stringent licensing standards than those of Michigan.

(Section 20961(1)(a) requires an applicant to meet the requirements of Part 209 and the rules promulgated by DHHS for licensure. Section 20961(1)(d) requires the state in which the applicant is licensed to maintain licensure standards equivalent to or more stringent than those of Michigan.)

The Order temporarily suspends strict compliance with Section 20958(2) of the Public Health Code to allow the Department to use electronic communications to provide to an applicant or licensee a notice of intent to deny, revoke, or suspend an emergency services personnel license.

(Section 20958(2) requires any notice of intent to deny, revoke, or suspend an emergency services personnel license must be provided by certified mail or personal service. Additionally, this section establishes the timeframe and process to request a hearing upon receipt of the notice of intent by the applicant.)

Other Provisions. The Order states that any emergency medical services personnel or life support agency that provides medical services in support of Michigan's response to the COVID-19 pandemic are not liable for injuries sustained by an individual during the administration of those services, unless gross negligence causes the injury or death. Additionally, the Department may promulgate rules and regulations, issue orders and directives, and take other actions necessary to implement the Order. All rules, regulations, orders, directives, and actions promulgated to implement the Order will expire upon the end of the declared states of emergency and disaster.

Executive Order 2020-40

Effective on April 8, 2020, and continuing until May 5, 2020, at 11:59 PM, the Order specifies that enforcement of rules and procedures under Sections 5 and 7 of the Motor Carrier Fuel Tax Act (MCL 207.215 and 207.217) are temporarily suspended along with any associated fines, penalties, or criminal sanctions for violation of those requirements for motor carriers providing critical assistance related to COVID-19. The Order also temporarily suspends any other requirements administered by the Department of Treasury concerning motor carriers under the International Fuel Tax Agreement and an associated fines, penalties, or criminal sanctions.

Section 5 of the Motor Carrier Fuel Tax Act requires operators of motor carriers using and consuming motor fuels or alternative fuels on public roads or highways in the State to be licensed. The licenses will be issued for those that meet filing requirements and file bonds payable to the State. Section 7 of the Motor Carrier Fuel Tax Act allows motor carriers to obtain trip permits to authorized unlicensed motor carriers to operate specific commercial motor vehicles for five consecutive days.

The Order defines critical assistance to mean transportation and other relief services that meet immediate needs for the following purposes:

- Medical supplies or equipment related to testing, diagnosis, or treatment of COVID-19.

- Supplies necessary for community safety, sanitation, or prevention of COVID-19.
- Food for emergency restocking of stores.
- Equipment, supplies, or individuals necessary to establish or manage temporary housing, quarantine, or isolation facilities related to COVID-19.
- Individuals designated by Federal, State, or local authorities for medical, isolation, or quarantine purposes.
- Individuals necessary to provide other medical or emergency services, which may be affected by COVID-19.

The Order states that critical assistance does not include routine commercial deliveries of supplies, equipment, or people that are not being transported in support of emergency relief efforts related to COVID-19 or the transportation of mixed loads that include essential and nonessential items.

Executive Order 2020-41

Effective April 8, 2020, and continuing until May 6, 2020, at 11:59 PM, the Order relaxes strict compliance with the Uniform Electronic Transactions Act (UETA), the Uniform Real Property Electronic Recording Act (URPERA), and the Michigan Law on Notarial Acts (MLNA).

Compliance with UETA and URPERA 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 a law specifically mandates a physical signature. Section 18 of the UETA grants the Department of Technology, Management and Budget (DTMB) the authority to determine to what extent State departments send and accept electronic records and electronic signatures from other parties based upon several factors, including security, the type of electronic record or signature, preservation, disposition, integrity, confidentiality, and auditability. The Order temporarily suspends strict compliance with Section 18 of the UETA to allow each State department to send and accept electronic records and electronic signatures without the approval of the DTMB.

Compliance with the MLNA is temporarily suspended to the extent that it requires a notary to be physically present when performing notary services under specifically tailored circumstances. The Order specifies that any notarial act that may otherwise require in-person notarial services may be performed by a commissioned notary using two-way real-time audiovisual technology under the following conditions:

- The technology must allow direct interaction between the notary, the person seeking notary services, and any witnesses wherein each can communicate simultaneously by sight and sound.
- The technology must be capable of creating an audio and visual recording of the complete notarial act and the recording must be retained as a notarial record in accordance with the MLNA.
- The individual seeking notarial services must present satisfactory identification during the video conference in accordance with the MLNA and any other applicable law.
- The individual seeking notarial services must affirmatively represent to the notary that the individual is physically within Michigan or that the documents to be notarized are intended to

be filed in Michigan or that such documents involve property within, or substantially connected to, Michigan.

- Electronic signatures for notarial services must be tamper proof.
- The individual seeking notarial services must transmit the entire signed document to the notary on the same day it was signed.

The Order encourages people and State agencies and officials to use electronic records and electronic signatures to conduct business and to use a remote electronic notary whenever a notarized signature is required. Any requirement under any Michigan law that requires an in-person witness can be satisfied with the use of two-way real-time audiovisual technology under the following conditions:

- The technology must allow for direct, contemporaneous interaction by sight and sound between a signatory and a witness.
- The technology must allow for a recording to be preserved of the interaction between the signatory and the witness.
- The signatory must affirmatively represent to the witness that the signatory is physically within Michigan or that the documents to be signed are intended to be filed in Michigan or that such documents involve property within, or substantially connected to, Michigan.
- The signatory must affirmatively state to the witness what document the signatory is signing.
- Each page and each signature of the document must be shown to the witness and observed by the witness.
- The signatory must transmit the document to the witness within 24 hours after it is executed, and the witness must sign the document as a witness and return it to the signatory within 24 hours after its receipt.

The Order permits the signing of any document in counterparts, barring a prohibition with the document that it may not be signed in counterparts.

The Order permits a guardian, guardian ad litem, or visitor to satisfy any visitation requirement using two-way real-time audiovisual technology that allows for direct, contemporaneous interaction by sight and sound.

During its effect, the Order prohibits financial institutions and registers of deeds from refusing to record a copy of an electronic record on the ground that it does not bear an original signature, so long as the notary certifies the copy as an accurate electronic record.

For the purposes of the "verified user agreement" requirement of Section 4 of the URPRA, MCL 565.844(4), the Order requires that county recording offices deem all financial institutions and all licensed title insurers as covered by a verified user agreement for the duration of the order.

Executive Order 2020-42

The Order extended the measures set forth in Executive Order 2020-21, with certain clarifications and additions. The Order took effect April 9, 2020, at 11:59 PM (at which time Executive Order 2020-21 was rescinded), and was effective through April 24, 2020, at 11:00 AM. On that date, it was rescinded by Executive Order 2020-59, which will be detailed in a subsequent memorandum.

During the length of the Order, all individuals living within the State of Michigan were required to stay at home or at their place of residence, with the following exceptions:

- To engage in outdoor activity or recreation that was consistent with remaining at least six feet from people from outside an individual's household.
- To perform jobs as "critical infrastructure workers".
- To conduct minimum basic operations after being designated to perform that work by their employers.
- To perform necessary government activities.
- To perform tasks that were necessary to an individual's health and safety, or to the health and safety of his or her family or household members (including pets).
- To obtain necessary services or supplies (such as groceries, take-out food, gasoline, medical supplies, and other items needed to maintain safety, sanitation, and basic residential operations) for themselves, their family or household members, and their vehicles.
- To care for a family member or a family member's pet in another household.
- To care for minors, dependents, the elderly, individuals with disabilities, or other vulnerable individuals.
- To visit an individual under the care of a health care facility, residential care facility, or congregate care facility.
- To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
- To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provided food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who needed assistance as a result of this emergency, and people with disabilities.
- To attend a funeral, provided that no more than ten people were in attendance.
- To return to a home or place of residence from outside Michigan, to leave the State for a home or residence located elsewhere, or, as required by law enforcement or a court order, including transporting children pursuant to a custody agreement.

All other travel was prohibited, including all travel to vacation rentals or multiple residences.

"Critical infrastructure workers" was defined as those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in guidance issued March 19, 2020 on the COVID-19 response. The definition included workers in certain listed sectors, such as health care and public health, and food and agriculture.

Individuals also were required to adhere to social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people outside the individual's household.

The Order prohibited an individual or entity from operating a business or conducting operations that required workers to leave their homes or places of residence except to the extent that those workers were necessary to sustain or protect life or to conduct minimum basic operations. Businesses and operations that employed critical infrastructure workers were authorized to continue in-person operations subject to a variety of conditions.

Any stores that remained open for in-person sales had to do the following:

- For stores of less than 50,000 square feet, limit the total number of people (including employees) to 25% of occupancy limits.
- For stores of more than 50,000 square feet, limit the number of customers in the store at one time (excluding employees) to four people per 1,000 square feet of customer floor space.

Stores that exceed 50,000 square feet had close off areas of the store dedicated to selling carpet or flooring, furniture, garden centers and plant nurseries, and paint. They also had to refrain from promoting or advertising nonessential goods after April 13, 2020, and had to establish at least two hours per week of dedicated shopping time for vulnerable populations.

The Order prohibited anyone from advertising or renting 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 health crisis.

The Order also suspended all in-person government activities at the State, county, and local level not necessary to sustain or protect life (or to support those activities). Government activities necessary to sustain or protect life included a variety of specified activities, including law enforcement, public safety, first response, trash pick-up and disposal, elections oversight, and public transit.

Executive Order 2020-43

The Order rescinds Executive Order 2020-20, which imposed temporary restrictions on the use of places of public accommodation. Executive Order 2020-43 extends the restrictions in Executive Order 2020-20, which were set to expire April 13, 2020, at 11:59 PM, through April 30, 2020, at 11:59 PM.

Those restrictions closed the following places of public accommodation 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.

The Order encourages places of public accommodation listed above 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. When offering food and beverages at the above public accommodations, these places may permit up to five members of the public on the premises at any one time 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" is defined by the Order to 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.

"Place of public accommodation" is defined by the Order to mean a business, or facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. Place of public accommodation also includes private clubs, including country clubs, golf clubs, boating or yachting clubs, sports or athletic clubs, and dining clubs.

"Place of public amusement" is defined by the Order as a place of public accommodation that offers indoor services or facilities, or outdoor services or facilities involving close contact of persons, for amusement or other recreational or entertainment purposes. A place of public amusement includes an amusement park, arcade, bingo hall, bowling alley, indoor climbing facility, skating rink, trampoline park, and other similar recreational or entertainment facilities.

Executive Order 2020-44

The Order rescinds Executive Order 2020-12, which temporarily lifted some load and noise restrictions and called for expedited permitting for some overweight/oversize loads. The Order is effective April 13, 2020, and will remain in effect until May 11, 2020, at 11:59 PM. It specifies that 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 2020-45

Effective April 13, 2020, and extending through May 11, 2020, at 11:59 PM, the Order rescinds EO 2020-23 and authorizes State agencies to use electronic remote methods for conducting administrative procedures, including hearings. It also authorizes the use of electronic signatures for satisfying signature requirements related to administrative procedural activities.

Specifically, Michigan Employment Relations Commission (MERC) hearings and Unemployment Insurance Agency hearings may be conducted by electronic means, including by video conference. Any hearings required by law, rule, or regulation, as well as any held under the Administrative Procedures Act and the Michigan Administrative Hearings System Administrative Hearing Rules also may be held by telephone or by electronic means.

The Order also allows notice and services of process required by the Administrative Procedures Act and the Michigan Administrative Hearings System Administrative Hearing Rules to be provided by mail or electronically. Notices to the MERC, communications and notices pertaining to an impending strike or lockout, and notices to and by the Unemployment Insurance Agency may be provided by mail or electronically.

Under the Order, the DTMB is directed to authorize the use of electronic signatures as required under the Administrative Procedures Act and under the following sections of the Michigan Employment Security Act: 11(b)(4), 32b(3), and 54f. An electronic signature is sufficient to satisfy a requirement for a signature under the law.

Strict compliance with statutes and rules regarding hearings and notices covered under the provisions of the Executive Order is temporarily suspended to the extent necessary to allow for alternative means of communication. However, compliance with the statutes and rules pertaining to the Joint Committee on Administrative Rules is still required. Administrative and emergency rules may be filed with the Secretary of State electronically. The temporary suspensions are in effect for the duration of the EO.

Executive Order 2020-46

Effective April 13, 2020, the Order authorizes the Michigan Liquor Control Commission (MLCC) to offer to a licensee a cash buyback of any spirits it ordered from the MLCC and received and accepted from an Authorized Distribution Agent before March 16, 2020. The Commission may accept a request only from a licensee that holds one of the following license types: Class C, B-Hotel, G-1, Club, Continuing Care Retirement Center, Aircraft, Watercraft, and Train License. The Commission must accept all requests made by 5:00 PM on April 17, 2020.

When a licensee opts into the buyback program, the MLCC must advance to the licensee 100% of the purchase price of those spirits that are in its inventory. After advancing cash to a licensee, the Commission will hold legal title to all spirits purchased by the licensee before March 16, 2020, that are in the licensee's inventory when the licensee opts into the program. The Commission must not take physical possession of any of the spirits except as provided in the EO or any order that may follow from it. The licensee must take all reasonable care to account for and preserve an inventory of the spirits.

A licensee that opts into the program, at any time before the Commission takes physical possession of the spirits it owns, may repay to the Commission the full amount advanced to it. After repayment of the full buyback amount, the licensee will hold title to the spirits in its possession. The Commission may take physical possession of any spirits held by a licensee to which the MLCC holds legal title any time after 90 days after the end of the state of emergency and disaster.

The Order allows the MLCC to issue orders and directives, and to take other actions under law, to implement the EO.

Executive Order 2020-47

Effective April 13, 2020, this Order temporarily extends the validity of certain operator's and chauffeur's licenses, State identification (ID) cards, and vehicle registrations.

Individuals must, to the best of their ability, complete vehicle registrations or license renewals online during the declared states of emergency and disaster.

To the extent possible the Order temporarily suspends, until June 30, 2020, the following:

- Strict compliance with Section 2 of PA 222 of 1972 (State personal ID card), to extend the validity of a State personal ID card that expired or is set to expire between February 1, 2020, and May 31, 2020.
- Strict compliance with Sections 309 and 314 of the Michigan Vehicle Code, to extend the validity of an operator's license or chauffeur's license that expired or is set to expire between February 1, 2020, and May 31, 2020.
- Strict compliance with Sections 303 and 312f of the Michigan Vehicle Code, to suspend any applicable medical certification requirement for operator's or chauffeur's license holders with a Group A, or Group B, or Group C designation; individuals who otherwise have to carry a valid medical certificate must carry a paper copy of an otherwise valid medical certificate that expired on or after March 1, 2020.
- Strict compliance with rules and procedures under Section 216 of the Michigan Vehicle Code, to allow an operator's or chauffeur's license holder with a Group A, or Group B, or Group C designation to operate a commercial vehicle as though it had a valid vehicle registration so long as that commercial vehicle has an otherwise-valid vehicle registration that expired on or after March 1, 2020.

The Order also states that until June 30, 2020, driving with a vehicle registration, operator's license, or chauffeur's license that expired on or after February 1, 2020, does not constitute a violation of the Michigan Vehicle Code. Law enforcement officials must not arrest any individual

nor impound any vehicle as a result of a vehicle registration, operator's license, or chauffeur's license that expired on or after February 1, 2020.

Additionally, the Department of State may not assess a late fee at renewal for a license or registration that expired between February 1, 2020, and May 1, 2020, so long as renewal occurs by June 30, 2020. The Order also states that nothing in the order prevents the Secretary of State from suspending or revoking an operator's or chauffeur's license, commercial learner's permit, vehicle designations, or endorsements on an operator's or chauffeur's license pursuant to the Michigan Vehicle Code.

Finally, the relief afforded in the Order does not apply to individuals who:

- Had their driving privileges suspended or revoked for traffic offenses.
- Since their last medical certificate was issued, have been diagnosed with a medical condition that disqualifies them from operating a commercial vehicle.
- Since their last medical certificate was issued, have developed a condition that requires an exemption or Skill Performance Evaluation from the Federal Motor Carrier Safety Administration.

Executive Order 2020-48

Effective April 14, 2020, and continuing until May 12, 2020, EO 2020-48 rescinds and replaces EO 2020-15. 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, the Order suspends strict compliance with Section 3 of OMA 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 Order 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. Notices must include an explanation to meet electronically, details on procedures for the public to participate,

procedures by which people may contact members of the public body to provide input or questions, procedures by which individuals with disabilities may participate.

- 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.
- 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 "around-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. Members must avoid using email, texting, instant messaging, and other such electronic forms of communication to make decisions. Also, during the period of the Order, school district boards are not required to hold meetings at least once a month.

The EO does not permit 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 2020-49

Effective April 14, 2020, and continuing through May 12, 2020, at 11:59 PM, the Order rescinds Executive Order 2020-13 and extends the authority of the DHHS to issue an emergency certificate of need (CON) and defers strict compliance with CON requirements. This allows for continued expansion of hospital bed capacity.

The Order also extends the authority of the Department of Licensing and Regulatory Affairs (LARA) to 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. The Order applies regardless of number of beds or location.

In addition, LARA may issue 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 declaration of emergency is lifted.

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 2020-50

Effective April 15, 2020, and continuing until May 13, 2020, the Order implements protections for residents and employees of long-term care facilities in the State of Michigan.

The Order bars evictions or involuntary discharges for residents for nonpayment while noting that residents subject to an admission contract with a long-term care facility are still obliged to pay for services. The Order bars a long-term care facility from denying admission or readmission of a resident based on COVID-19 testing requirements. The Order bars a facility from prohibiting the readmission of a resident who is residing elsewhere (such as with family) during the emergency. The Order requires the use of telemedicine when feasible.

The Order directs long-term care facility employees who test positive for COVID-19 or show one or more of the symptoms of COVID-19 to remain in their homes and prohibits their employers from discharging or disciplining them for staying at home.

The Order requires long-term care facilities to cancel communal dining and group activities, to take precautions to disinfect and clean facilities, to provide personal protective equipment (PPE) and hand sanitizer to employees, to inform employees of the presence of any COVID-19 affected resident (and report that information to their local health department and the Department of Health and Human Services), and keep and report data on the quantity of PPE available on-site.

The Order requires long-term care facilities to transfer medically unstable COVID-19 infected residents to a hospital for evaluation. Long-term care facilities with a census below 80.0% must create a unit dedicated to the care of COVID-19 residents and provide appropriate PPE to staff in that unit. A long-term care provider with multiple facilities may designate a specific facility for COVID-19 residents.

Facilities must transfer COVID-19 affected residents to a dedicated unit or regional hub if available. If none are available, then the facility must transfer the resident to a hospital. If no hospital will admit the resident, then the long-term care facility must transfer the resident to an

alternate care facility such as the temporary hospitals that have been created in the State. Once a transferred person is stabilized then he or she must be transferred back to the long-term care facility as long as the facility has a dedicated unit and PPE for employees. If the facility does not meet these criteria, then the person must be transferred to a regional hub or alternate care facility.

Executive Order 2020-51

Effective April 15, 2020, and continuing until May 13, 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. The Order rescinds Executive Order 2020-16, which granted similar authorization. It will LARA to issue provisional licenses for child care organizations under terms that differ from those found in statute. The Department is authorized to renew provisional licenses until the termination of the state of emergency.

The Order 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 Order 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.

Also under Public Act 116 of 1973, provisional licenses expire six months after issuance and maybe renewed up to three times. The Order grants LARA 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 end of the declared state of Emergency.

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 Order. The Order 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 LARA. The Order requires the rules to address certain areas of concern related to child care and sanitary practices.

Under the 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 LARA.

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

Violations of Orders

Executive Orders 2020-37, 2020-42, 2020-43, 2020-44, 2020-45, 2020-50, and 2020-51 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 2020-36

The Order will have a negative fiscal impact on the Department of Labor and Economic Opportunity, State government, and local units of government. The Department will experience additional administrative costs to implement the Order, collect and refer complaints, and follow complaints as necessary. This will include additional staff, information technology, and administrative costs. The Department may be able to use resources from existing staff underutilized because of COVID-19. It is likely that current staff and appropriations are sufficient to cover the additional potential costs.

The State and various local units of government will need to ensure that human resource units are following the Order. This may result in additional human resource costs, which should be minor and within current appropriations.

Executive Order 2020-37

There are two main requirements listed under Executive Order 2020-37. First, the Order requires 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 is required upon entry. These requirements apply to health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities.

When determining the fiscal impact on 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 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 EO. The State also operates two juvenile justice facilities: Bay Pines Center and Shawono Center. The University of Michigan Health System operates hospitals that are 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 the 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 EO 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.

Lastly, the EO requests that facilities make best efforts to facilitate visitation by phone or electronic communication platforms to the fullest extent possible, consistent with normal visitation policies. It is not clear to what extent there is any existing infrastructure for phone or electronic communication platforms in these facilities. To the extent that there is existing infrastructure in the State-managed facilities, such as facility telephones, State-issued cell phones, or State-issued hardware that enables connection to electronic communication platforms, there will be no cost to State government. It is unclear whether making a best effort requires the facility to obtain necessary infrastructure to allow for the facilitation of visitation. If the Order requires procurement of goods needed to comply with the Order, there would be direct costs to State government and any local units of government that are a fiduciary for a facility covered under the Order.

Executive Order 2020-38

Public bodies across the State may incur minimal additional costs related to the upgrade or purchase of the technology required to continue to respond to requests for public information according to the provisions of the Order. Any additional administrative costs will be minor and handled within existing appropriations.

Executive Order 2020-39

The EO will have a minor fiscal impact on the State. Any additional administrative or communication costs resulting from notifying emergency medical services personnel and life support agencies of the changes may be borne by existing Department resources. The fiscal year (FY) 2019-20 budget included \$6,594,100 Gross and \$1,488,100 General Fund/General Purpose (GF/GP) for the Emergency Medical Services Program line item, which supports functions such as licensure of agencies, life support vehicles, and personnel as well as vehicle inspections, and complaint investigations among other Emergency Medical Services functions. As of April 21, 2020, expenditures from this line totaled approximately \$2,342,000 Gross and \$936,800 GF/GP.

Executive Order 2020-40

The Order will have a negative fiscal impact on the State and Department of Treasury. The State will experience a revenue loss from reduced license and permit fees for motor carriers exempt under the Order. The Department will experience minor administrative costs to ensure compliance to the Order, which will be covered with existing staff and appropriations.

Executive Order 2020-41

Executive Order 2020-41 will have an indeterminate, positive fiscal impact on the State and local units of government. The Order is designed to encourage the transaction and exchange of signed or notarized business or real property documents with the aid of video conferencing instead of in-person requirements. It should be noted that the three Acts cited in the EO already validate electronic transactions and signatures generally. The Order addresses only three types of electronic transactions: those of the individual State departments, which will no longer need approval from the DTMB to conduct business electronically; those involving county recording offices, which will not need an established, verified user agreement to conduct business with licensed financial institutions or licensed title insurers; and those involving notarized documents, which traditionally require in-person notarial services.

The positive fiscal impact will come from direct or indirect revenue as a result of the increased flow of business transactions (including Department contracts), deed recordings, and real-property transactions. The degree of this impact will depend upon the ability of the State and the business community to adapt to, and employ, the use of electronic video conferencing tools.

Executive Order 2020-42

The Order (in combination with the preceding and subsequent orders of the same character) 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 business activity is reduced or that individuals are affected. For individuals, the impact also will be affected by the degree and extent to which individuals continue to receive pay, receive unemployment compensation 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 may be significant and likely will affect revenue in both FY 2019-20 as well as FY 2020-21 (when annual payments are due and/or reconciled).

The Department of State may see a decrease in revenue from various vehicle and driver license transactions. While only late fees are being waived while the Order is in effect, all fees will be due and eventually will be paid, so there is no large anticipated change to revenue. However, the Order could affect vehicle sales, which could reduce the amount of revenue the Department receives. However, these costs are indeterminate and will depend on how sales are affected and how long the stay-at-home order is in effect.

Executive Order 2020-43

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 monitor 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 2020-43, 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 revenue.

Executive Order 2020-43 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 and continuing through April 30, the negative fiscal impact will be at least 1.5 times 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. These costs represent the total costs of implementing the closures, and represent the Department's cumulative costs of EOs 9, 20, and 43.

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 may be significant and likely will affect revenue in both FY 2019-20 as well as FY 2020-21 (when annual payments are due and/or reconciled).

Executive Order 2020-44

Executive Order 2020-44 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 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 Order 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 2020-45

The Department of Technology, Management, and Budget may incur minimal additional costs related to the upgrade or purchase of the technology required to accept electronic signatures. Any additional administrative costs will be minor and handled within existing appropriations.

Similarly, the MERC within the Department of Labor and Economic Opportunity and the Michigan Administrative Hearings System within LARA each may incur additional costs associated with needed technology upgrades and increased paper communications. However, it is likely that these costs may be absorbed by existing appropriations for the given time period.

Executive Order 2020-46

The Executive Order likely will reduce revenue transferred from the Liquor Purchase Revolving Fund to the General Fund by an unknown amount that will depend on the degree to which licensees opted to participate in the buyback program. Because the program only applies to spirits purchased before March 16, 2020, and buyback requests must be made by April 17, 2020, any revenue reduction will affect only FY 2019-20.

It should be noted that any revenue reduction the State will experience as a result of the Order will occur inevitably, just at a later date. The Order does not change when liquor sales will occur,

only when the State and a licensee incur the costs (and profits) associated with the sale. Licensees presumably participate in the buyback program because sales have declined as a result of COVID-19 and are faced with both cash-flow pressures and excess inventory. Absent the buyback program, this inventory will remain with the licensee until it was eventually sold, reducing the need to purchase additional spirits at some future date.

The Liquor Purchase Revolving Fund is estimated to contribute \$230.0 million to the General Fund in FY 2019-20. If the buyback program under the Order reduced that contribution by 10% (approximately one month's worth of sales), it would reduce General Fund revenue by \$23.0 million.

Executive Order 2020-47

The Order should not have a significant fiscal impact on the Department of State, as it eventually will collect the fees that the Order suspends from collection, albeit at a later date than normal. The Order states that until June 30, 2020, driving with a vehicle registration, operator's license, or chauffeur's license that expired on or after February 1, 2020, does not constitute a violation of the Michigan Vehicle Code. This will result in an indeterminate loss in revenue for local libraries as civil fines for these infractions go to local libraries; the amount of loss in revenue will depend on the number of citations not issued during this period.

Regarding late fees, the Department could see a decrease in revenue as the Department of State may not assess a late fee at renewal for a license or registration that expired between February 1, 2020, and May 1, 2020, so long as renewal occurs by June 30, 2020. On average the Department of State collects an estimated \$965,000 in late fees for these renewals.

Executive Order 2020-48

The EO 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 2020-49

The extension of the loosening of CON restrictions will lead to greater availability of hospital beds, likely for COVID-19 patients, and a resultant increase in medical expenditures. The Department of Licensing and Regulatory Affairs does not expect Executive Order 2020-49 to have a significant fiscal impact. The cost of monitoring temporary licenses likely will be covered by existing appropriations and resources.

Executive Order 2020-50

The Order will increase short-term costs for nursing facilities, depending on the number of residents who are diagnosed with COVID-19. The costs will increase because of the costs of PPE and the possibility of additional staff being needed to provide services that had previously been provided in communal settings. As some nursing facilities are county-owned, this will have a clear

impact on local government. While costs for most nursing homes eventually are indirectly recouped through the rate-setting process, the retrospective nature of this process means that any reimbursement of cost increases will not occur for one to two years.

Executive Order 2020-51

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 Order suspends licensure requirements, it is unlikely that this will result in 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 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. This 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. Districts 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.

Conclusion

The Executive Orders summarized above to implement various measures in response to COVID-19 in Michigan. These measures affect, among other things, the operations of health care and child care facilities, Freedom of Information Act requests, emergency medical services, various licensing and permitting fees, electronic transactions and notarial services, the operations of places of public accommodation, and meetings of public bodies. The Executive Orders will have a fiscal impact on State revenue, various State departments, including the DHHS, LARA, MDOT, and local units of government.

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

/lms

c: Christopher Harkins, Director