

**SENATE FISCAL AGENCY  
 MEMORANDUM**

**DATE:** July 7, 2020  
**TO:** Members of the Michigan Senate  
**FROM:** Cory Savino, Ph.D., and Michael Siracuse, Fiscal Analysts  
**RE:** Executive Order 2020-130

**Overview**

On June 19, 2020, Governor Whitmer issued Executive Order (EO) 2020-130, which creates the Michigan Statewide Independent Living Council within the Executive Office of the Governor. The Council will work to develop, monitor, review, and implement the State's plan for independent living councils pursuant to Title VII of the Federal Rehabilitation Act. The Order rescinds EO 2016-11 and abolishes the Michigan Statewide Living Council.

The Order will take effect on July 15, 2020, at 12:01 AM.

**Authority**

Article V, Section 1 of the Michigan Constitution vests the executive power of the State with the Governor. Article V, Section 2 of the Michigan Constitution grants the Governor the authority to make changes in the organization of the executive branch or in the assignment of functions among its units when he or she considers it necessary for efficient administration. When these changes require the force of law, they must be set forth in executive orders and submitted to the Legislature. Upon receipt, the Legislature has 60 days to disapprove such orders by a resolution concurred in by a majority of members in the Senate and in the House of Representatives.

Creating a council within the Executive Office of the Governor does not require the force of law; therefore, the Order is not subject to disapproval by the Legislature.

The Order does not involve a Type I, II, or III transfer.

**Summary of Order Contents**

Creating the Statewide Independent Living Council

The Order creates the Michigan Statewide Independent Living Council within the Executive Office of the Governor.

The Council must consist of members who provide statewide representation, represent a broad range of individuals with disabilities from diverse backgrounds, and are knowledgeable about centers for independent living and independent living services. A majority of the members must be individuals with disabilities who are not employed by the Center for Independent Living or any other State agency.

The Council must include the following 11 voting members appointed by the Governor:

- One director of a center for independent living chosen by the directors of centers for independent living within the State.
- One individual representing parents or guardians of individuals with disabilities.
- One individual representing advocates of, and for, individuals with disabilities.
- One individual representing organizations that provide services for individuals with disabilities.
- Seven other residents of the State, including residents who represent underserved or tribal communities.

The Council also must include the following five nonvoting ex officio members appointed by the Governor:

- The Director of Michigan Rehabilitation Services, or his or her designee.
- The Director of the Bureau of Services for Blind Person, or his or her designee.
- A representative from the Michigan Department of Civil Rights Division on Deaf, DeafBlind, and Hard of Hearing.
- One representative from the Michigan Department of Education Office of Special Education.
- One representative from the Department of Health and Human Services (DHHS), designated by the Director of the DHHS, with knowledge of all programs within the Department that have an impact on individuals with disabilities.

Of the 11 voting members appointed to the Council, three must be appointed for a term expiring on December 31, 2021, four must be appointed for a term expiring on December 31, 2022, and four must be appointed for a term expiring on December 31, 2023. After their initial appointment, members must be appointed for three-year terms.

A vacancy must be filled in the same manner as the original appointment. An appointment to fill a vacancy created other than by the expiration of the term of a member must be for the remainder of the unexpired term.

Except as otherwise appointed, an appointment to the Council is for a three-year term. Members may be reappointed, but no member may serve more than two consecutive full terms.

#### Charge to the Council

The Order requires the Council to do the following:

- Develop the State plan as provided in Section 704(a)(2) of the Rehabilitation Act.<sup>1</sup>
- Monitor, review, and evaluate the implementation of the State plan.
- Meet regularly and ensure that Council meetings are open to the Public.
- Coordinate activities with other entities in the State that provide services similar or complementary to independent living services.
- Submit reports to the US Department of Health and Human Services, as requested by the Administrator of the Administration for Community Living.

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<sup>1</sup> 29 USC §701, et seq.

The Council must keep records and provide the Administrator access to such records, that the Administrator finds necessary to verify the reports. Copies of any reports must be transmitted to the Governor and the members of the Council.

The Council also may do the following, unless prohibited by State law:

- Work with centers for independent living to coordinate services with public and private entities to improve services provided to individuals with disabilities.
- Conduct resource development activities to support the Council and independent living services.
- Perform other comparable functions the Council deems appropriate, consistent with Section 701 of the Rehabilitation Act.

The Council may not provide direct independent services to individuals with significant disabilities or manage such services.

### Council Operations

The Order requires the Council to adopt procedures consistent with the Order and applicable law governing its organization and operation.

The Council may do all of the following:

- Establish advisory workgroups as deemed necessary by the Council to assist it in performing its duties and responsibilities.
- Adopt, reject, or modify any recommendations proposed by an advisory workgroup.
- Make inquires, studies, and investigations; hold hearings and forums; and receive comment from the public.
- Consult outside experts to perform its duties, including experts in the private sector, organized labor, government agencies, and at higher education institutions.
- Enter into agreements with State departments and agencies to assist the Council in performing its duties.
- Hire and retain contractors, subcontractors, advisors, consultants, or agents; and make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.
- Accept donations of labor, services, or other things of value from any public or private agency or person.

The Council must prepare a resource plan for the provision of resources, including staff and personnel, with funds made available under Title VII of the Rehabilitation Act and under Section 110 of the Rehabilitation Act, consistent with Section 101(a)(18) of the Rehabilitation Act, and from other public and private sources. It also must supervise and evaluate staff and personnel performing duties for the Council under the resource plan.

While assisting the Council in carrying out its duties, staff and other personnel performing duties pursuant to the resource plan may not be assigned duties by the designated State entity or other State agency or office that would create a conflict of interest.

The Council must comply with the Freedom of Information Act (FOIA). It must designate a FOIA coordinator, and must develop and implement the processes, procedures, and guidelines required of public bodies under FOIA. The Council may designate a private agency that pays for staff who support the Council to serve as the FOIA coordinator for the Council and the private agency.

### Implementation

Under the Order, all State departments and agencies must cooperate with the Council in the performance of its duties and responsibilities. The Council may request information and assistance from the State departments and agencies.

Any rules, orders, contracts, and agreements related to the Council lawfully in effect prior to the Order's effective date must continue to be effective until revised, amended, or repealed.

The Order is not intended to abate a proceeding commenced by, against, or before an entity affected by the Order. A proceeding may be maintained by, against, or before the successor of any entity affected under the Order.

If any portion of the Order is found to be unenforceable, the rest of the Order remains in effect.

### **Fiscal Impact**

The Council will incur costs for staff and support within the Executive Office of the Governor. Members of the Council may receive reasonable compensation and may be reimbursed for necessary travel and expenses consistent with current law, rules, and procedures subject to available funding. Additionally, the Council may use funds to support staff or other outside support.

The typical annual costs to support a council can range from \$100,000 to \$500,000, depending on the travel expenses and staff demands of the council. The costs will be determined by demand and available funding from the Rehabilitation Act and State appropriations. Accordingly, there is no anticipated need for additional funding beyond previous spending levels.

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c: Christopher Harkins, Director