

SENATE FISCAL AGENCY MEMORANDUM

DATE: April 21, 2020

TO: Members of the Michigan Senate

FROM: Bruce Baker, Ryan Bergan, Joe Carrasco, John Maxwell, Elizabeth Raczkowski, Cory Savino, and Michael Siracuse, Fiscal Analysts; Drew Krogulecki; Legislative Analyst; David Zin, Chief Economist; and Jeff Mann, Associate Director

RE: Coronavirus Disease 2019 (COVID-19) Executive Orders 2020-17, 2020-19, 2020-21 through 2020-23, 2020-25 through 2020-31, 2020-33, and 2020-34

Overview

On March 20, 2020, through April 2, 2020, Governor Whitmer issued Executive Orders (EOs) 2020-17 through 2020-34 to maintain 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, a statewide stay-at-home order, modifications to the implementation of elections, and suspending the enforcement of various medical licensing regulations.

This memorandum summarizes the contents and fiscal impacts of Executive Orders 2020-17, 2020-19, 2020-21 through 2020-23, 2020-25 through 2020-31, 2020-33, and 2020-34. (Several of these orders rescind previously issued orders; if so, that information is indicated below.) A previous Senate Fiscal Agency (SFA) memo, dated March 31, 2020, provides analysis for earlier Executive Orders. Subsequent memoranda will summarize Executive Orders issued after Executive Order 2020-34.

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 April 17, 2020, the DHHS has reported 30,791 cases and 2,308 deaths attributable to COVID-19.

Authority for Orders

Executive Order 2020-4 cited 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. Executive Order 2020-33 uses these same authorities to continue the state of emergency.

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 1945.¹

Summary of Order Contents

Executive Order 2020-17

Beginning on March 21, 2020, at 5:00 PM, and continuing while the state of emergency is in effect, all hospitals, freestanding surgical outpatient facilities, and dental facilities, and all State-operated outpatient facilities (collectively, "covered facilities"), must implement a plan to temporarily postpone all nonessential procedures. "Nonessential procedure" means a medical or dental procedure that is not necessary to address a medical emergency or to preserve the health and safety of a patient, as determined by a licensed medical provider. A covered facility must comply with the restrictions contained in its plan.

The plan for a covered facility that performs medical procedures must postpone, at a minimum, joint replacement, bariatric surgery, and cosmetic surgery, except for emergency or trauma-related surgery in which postponement would significantly affect the health, safety, and welfare of the patient. A plan for these facilities should exclude from postponement the following: advanced cardiovascular disease-related surgeries that would prolong life; oncological testing, treatment, and related procedures; pregnancy-related visits and procedures; labor and delivery; organ transplantation; and procedures related to dialysis. A plan must exclude from postponement emergency or trauma-related procedures in which postponement would significantly affect the health, safety, and welfare of the patient.

A plan for a covered facility that performs dental procedures must postpone any cosmetic or aesthetic procedures, any routine hygiene appointments, any orthodontic procedures that do not relieve pain or infection, do not restore oral function or are not trauma-related, any periodontal plastic surgery, any extractions of asymptomatic noncarious teeth, and any recall visits for periodontally healthy patients. If a covered facility that performs dental procedures, its plan must exclude from postponement emergency or trauma-related procedures in which postponement would significantly affect the health, safety, and welfare of the patient.

The Order does not alter any of the obligations under law of an affected health care facility to its employees or to the employees of another employer.

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.

The Director of the Department of Licensing and Regulatory Affairs (LARA) must issue orders or directives as needed to enforce the Order.

A willful violation of the Order is a misdemeanor.

Executive Order 2020-19

Effective March 20, 2020, and continuing until April 17, 2020, at 11:59 PM, the Order prohibits a person from removing or excluding from leased residential premises or residential premises held under a forfeited executory contract a tenant, a vendee of a forfeited executory contract, or a person holding under a tenant or vendee, except when the tenant, vendee, or person holding under them poses a substantial risk to another person or an imminent and severe risk to property.

For the same period, the Order prohibits a person from entering residential property to remove or exclude from the premises a tenant, a vendee of a forfeited executory contract, a person holding under a tenant or vendee, or the personal property of any of those individuals or entities, including pursuant to a writ of restitution, except when the tenant, vendee, or person holding under them poses a substantial risk to another person or an imminent and severe risk to property.

A sheriff, undersheriff or constable, deputy, or other officer may not serve process requiring forfeiture of leased residential premises or residential premises held under a forfeited executory contract. Any requirements imposed by the Revised Judicature Act are suspended.

The Order prohibits a person from denying a mobile home owner access to his or her mobile home, except when the mobile home owner's tenancy has been terminated because he or she poses a substantial risk to another person or an imminent and severe risk to property.

Until 30 days after the restrictions provided above expire, any statutory limits on Michigan courts to adjourn any proceedings, toll any redemption or limitation periods, or extend any deadlines are suspended. The Order is not intended to abrogate the judicial power under the Michigan Constitution, and does not affect the inherent power of a judge to order equitable relief. In addition, the order does not abrogate the obligation to pay or right to receive payment due under a lease, nor the obligations and duties prescribed under the Revised Judicature Act pertaining to demands for possession or payment. While the Order is in effect, however, demand for payment may not be served by personal delivery.

As used in the Order, all of the terms have the meanings provided by the Revised Judicature Act.

A willful violation of the Executive Order is a misdemeanor.

Executive Order 2020-21

Beginning March 24, 2020 at 12:01 AM, and continuing until April 13, 2020, at 11:59 PM, all individuals living within the State of Michigan are ordered to stay at home or at their place of residence, with the following exceptions:

- To engage in outdoor activity or recreation that is 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 such work by their employers.
- To perform necessary government activities.
- To perform tasks that are 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 provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
- To return to a home or place of residence from outside Michigan, to leave the State for a home or residence located elsewhere, to travel between two residences within Michigan, or, as required by law enforcement or a court order, including transporting children pursuant to a custody agreement.

"Critical infrastructure workers" are 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 includes workers in certain listed sectors, such as health care and public health, and food and agriculture.

Individuals are also 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 prohibits an individual or entity from operating a business or conducting operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations. Businesses and operations that employ critical infrastructure workers may continue in-person operations subject to a variety of conditions.

The Order also suspends 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 include a variety of specified activities, including law enforcement, public safety, first response, trash pick-up and disposal, elections oversight, and public transit.

Executive Order 2020-22

Executive Order 2020-22 is effective retroactive to March 24, 2020, and temporarily suspends strict compliance with the rules and procedures under the following provisions of the Michigan Election Law.

- Section 822(1), to extend the deadline to April 24, 2020, for a board of county canvassers to complete the canvass of the election held on March 10, 2020.
- Section 822(2), to extend the deadline to April 24, 2020, for a board of county canvassers, if it has not yet certified the results of the March 10, 2020, election, to immediately deliver to the secretary of the board of state canvassers all records and other information pertaining to that election.
- Section 842(1), to extend the deadline to April 30, 2020, for the board of state canvassers to ascertain and determine the results of the March 10, 2020, election.

The Order also strongly encourages boards of county canvassers and the board of state canvassers to meet electronically, as feasible and otherwise authorized. If an in-person meeting is necessary, boards of county canvassers and the board of state canvassers must follow the mitigation measures set forth in Executive Order 2020-21.

The Order also does not affect the status of a canvass of an election already completed by a board of county canvassers before issuance of Executive Order 2020-22.

Executive Order 2020-23

Effective March 25, 2020, and extending through April 13, 2020, at 11:59 PM, the Order 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 may also 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 also may be provided by mail or electronically.

Under the Order, the Department of Technology, Management, and Budget 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.

A violation of the EO is a misdemeanor.

Executive Order 2020-25

On March 25, 2020, Governor Whitmer issued Executive Order 2020-25. The Order pertains to patient prescriptions and the regulation of pharmacists, pharmacy technicians, and similar licensees who may prepare or dispense prescription medications, or who otherwise perform pharmacy work during the state of emergency. The EO allows pharmacists and others to conduct their work in a manner that differs from standard practice and, in some cases, conflicts with existing statutes, rules, and regulations. The EO also suspends strict compliance with current law and regulations to the extent they conflict with the permissions outlined by the Order. The Order is in effect until April 22, 2020, at 11:59 PM.

Prescriptions and Refills. The Order states a pharmacist may offer emergency refills of up to 60 days of any noncontrolled maintenance medications to Michigan residents if failure to refill the medication would be disruptive to the patient's health. The pharmacist must inform the patient that his or her prescription is being refilled in accordance with the EO. The pharmacist also is required to make a reasonable effort to contact the prescriber and inform him or her of the refill. He or she also must give written notice to the prescriber and keep a record of his or her efforts to contact that individual regarding the patient's prescription. The EO exempts a prescriber from any criminal or civil liability or from any disciplinary action as a result of a pharmacist's refilling a prescription under the Order

The Order allows a pharmacist to substitute an equivalent medication when fulfilling or refilling a prescription if the prescribed medication is subject to critical shortage. Pharmacists may do so without authorization from the prescriber, but must inform the patient of the change and must inform the prescriber of the substitution within a reasonable time frame. The Executive Order states that strict compliance with specified provisions of the Public Health Code and the Michigan Administrative Code is suspended to the extent those provisions are inconsistent with the Order. A prescriber is exempt of criminal or civil liability as well as disciplinary action because of a pharmacist's actions under the Order.

Pharmacists are permitted to dispense and administer drugs to treat COVID-19 in accordance with the protocols established by the Centers for Disease Control and Prevention or the National Institute of Health, or as determined appropriate by the chief medical executive of the DHHS or her designee.

Insurers and health maintenance organizations that issue policies that provide prescription drug benefits must cover any emergency refills issued under the Order, including early refills.

Temporary Facilities and Dispensing of COVID-19 Treatments. The EO allows pharmacists to temporarily operate a pharmacy in an area other than that designated on the pharmacy license. However, those licensees may prepare only low-risk preparations, as defined by U.S. Pharmacopeia standards, of sterile drug products for immediate inpatient administration in those areas.

Strict compliance with a rule requiring separate pharmacy locations preparing or dispensing drugs to be licensed is suspended. A licensee moving to a new location is not strictly required to apply and be approved for a new license prior to performing work at the new location. Prescriptions may be dispensed even if the pharmacy is not under the personal charge of a pharmacist.

Due to the operational allowances made under the Executive Order, strict compliance with existing statute regarding the spatial dimensions, size, and set-up of prescription departments in other areas is suspended to the extent that it would conflict with the permissions granted in the remainder of the Order.

Controlled Substances. A controlled substance may be dispensed by a pharmacist or pharmacist intern without the immediate supervision of another pharmacist.

Regulations Pertaining to Supervision. The EO allows pharmacists to perform remote supervision provided it is done through a real-time audiovisual system that permits the pharmacist to identify markings on medications. In addition, the relevant patient information must be available to the pharmacist throughout the supervision. Remote supervision is not sufficient to allow a pharmacy technician to perform sterile or nonsterile compounding. A pharmacist must be on the pharmacy premises for a technician to perform compounding.

A pharmacy technician may engage in the activities for which they are licensed without the supervision and personal charge of a pharmacist or dispensing prescriber. A pharmacist may delegate tasks to another person without performing all of the checks required by the Michigan Administrative Code. This includes providing written protocols and supervision.

A pharmacist intern may engage in the practice of pharmacy without supervision of a pharmacist preceptor but in compliance with all other relevant regulations not suspended by this Executive Order. Interns may earn hours of experience while performing activity not supervised by a pharmacist preceptor.

The Executive Order also waives the requirement that a pharmacist's license applicant must show evidence of the completion of continuing education credits.

Pharmacy personnel also may perform functions for the care of inpatients delegated to them by a pharmacist without supervision of an on-premise pharmacist at a medical institution. An automated device designed for "selling, dispensing, or otherwise disposing of any drug or device ordered by a prescription", located in a licensed pharmacy, may be used without the personal charge of a pharmacist.

The Executive Order also suspends the strict requirement that a pharmacy be licensed and under the personal charge of a pharmacist who is in charge of not more than one pharmacy. This section of statute also states that pharmacy services are not to be conducted unless under the control and personal charge of a pharmacist. These regulations are suspended insofar as they conflict with the EO.

Out-of-State Entities. The EO requires pharmacies licensed, certified, or otherwise registered and in good standing in another state to be deemed licensed to do business in Michigan. These pharmacies are required to follow all applicable Michigan regulations, but their pharmacists-in-charge do not need to have a license to practice in Michigan. The pharmacy must be accredited by a national organization approved by the Michigan Board of Pharmacy before it may provide

sterile compounding services to patients. Pharmacies under this section are prohibited from delivering controlled substances in Michigan.

Wholesale distributors which are properly licensed, certified, or otherwise registered and in good standing in another state must be deemed licensed to do business in Michigan. A distributor under this section is prohibited from delivering controlled substances in Michigan and must adhere to Michigan regulations applicable to a Michigan-licensed wholesaler distributor.

The EO suspends compliance with Section 17748 of the Public Health Code, which governs the licensing of pharmacies, manufacturers, and wholesalers, to the extent that it is inconsistent with the rest of the Executive Order.

Other Statutes, Rules, and Regulations. The Executive Order suspends strict compliance with other statutes, rules, and regulations that may be inconsistent with the Order. This includes additional sections of the Public Health Code and the Michigan Administrative Code.

Executive Order 2020-26

The Executive Order specifies that strict compliance with rules and procedures under Sections 311, 315, 681, and 685 of the Income Tax Act are temporarily suspended, and directs that the deadlines by which taxpayers are required to file annual State income tax returns by April 15 or April 30 are extended to July 15 and July 31, respectively. The Order also extends the deadlines for all taxpayers to pay State income taxes in connection with an annual State income tax return from April 15 to July 15 and April 30 to July 31. Additionally, penalties and interest applied for failure to file a State income tax return or failure to pay state income taxes are aligned to the new deadlines and interest will not accrue until the day after the new deadlines.

(Section 311 requires a taxpayer on or before the due date set for filing a return or the payment of tax to verify and transmit the return to the Department of Treasury, among other things. Section 315 specifies what must be submitted to the Department on or before April 15. Section 681 concerns quarterly returns and estimated payments. Section 685 requires an annual or final return to be filed with the Department by April 30 after the end of the taxpayer's tax year, among other things.)

The Order temporarily suspends strict compliance with rules and procedures under Sections 301(1) and 681(2) of the Act to extend until July 15 the deadline for all taxpayers required to pay estimated State income taxes that would otherwise be due on April 15.

(Section 301(1) requires every person who's annual tax can be expected to exceed a certain amount withheld under the Act and the credits allowed under Part 1 of the Act by more than \$500 must pay to the Department installments of estimated tax under Part 1 on or before April 15, June 15, and September 15 of the person's tax year and January 15 in the following year. Section 681(2) specifies that, for taxpayers on a calendar year basis, quarterly returns and estimated payments must be made by April 15, July 15, October 15, and January 15.)

The Order temporarily suspends strict compliance with rules and procedures under Section 24 and 27 of the revenue Act to ensure that penalties and interest for failure to file a State income tax return or failure to pay State income taxes are aligned with the deadline extensions set forth in the Order. (These sections concern penalties for failure to make payments or make fraudulent claims in a return, among other things.) Any applicable penalties and interest will not begin to

accrue until July 16 for any remaining unpaid balances due on July 15, and will not begin to accrue until August 1 for any remaining unpaid balances due on July 31.

The Order temporarily suspends strict compliance with rules and procedures under Section 30 of the Act to clarify that interest at the rate provided in that Section will be added to a refund for amounts paid for tax year 2019 beginning 45 days after the claim for the refund is filed or 45 days after the date by which a return must be filed under the Order, whichever is later. Additional interest under that Section may not apply to a 2019 income tax return for which the filing deadline was extended.

The Order temporarily suspends strict compliance with certain rules and procedures under Sections 41, 43, 62, 63, and 64 of the City Income Tax Act to extend the deadlines for all taxpayer required to file an annual city income tax return and to pay estimated city income taxes in April. The deadlines of April 15 and April 30 are extended to July 15 and July 31. This also extends the deadlines for all taxpayers required to pay estimated city income tax extension payments that would otherwise be due on April 15 or April 30 to be due on July 15 or July 31.

(Section 41 requires every corporation doing business in the city and every other person having taxable income to make and file with the city an annual return on or before April 15 or 30, depending on certain circumstances. Section 43 concerns the payment of taxes, refunds, and interest pertaining to city taxes, among other things. Section 62 specifies that a person who anticipates taxable income from which the city income tax will not be withheld with the city or the Department must file a declaration of estimated tax on a form furnished by or obtainable on request from the city or from the Department if the city has entered a specific agreement, and lists the dates by which these declarations must be filed. Section 63 requires an estimated tax to be paid in full with the declaration or in four equal installments by specified dates. Section 64 requires an annual return to be filed with the city by April 30 or for tax years after the 1996 tax year and for which a city has entered into a certain agreement, filed with the Department on or before April 15, allows for a filing extension, and prohibits a penalty or interest from being assessed if certain criteria are met.)

The Order temporarily suspends strict compliance with rules and procedures under Section 64 and 82 of the Act to ensure that penalties and interest for failure to file a city income tax return or failure to pay city income taxes are aligned with the deadline extensions set forth by the Order. (These sections concern penalties for failure to make payments, among other things.) Any applicable penalties and interest will not begin to accrue until July 16 for any remaining unpaid balances due on July 15, and will not begin to accrue until August 1 for any remaining unpaid balances due on July 31.

The Order also specifies that the temporary suspension of strict compliance with rules and procedures under Section 43 of the Act is to clarify that, except for a refund under Section 61 (which concerns an employer's reconciliation of quarterly returns), interest at the rate established under Section 30 of the revenue Act will be added to a refund for an overpayment of taxes for tax year 2019 beginning 45 days after the claim for the refund is filed or 45 days after the date by which a return must be filed under the Order, whichever is later.

This Order and its extensions are effective immediately and does not require taxpayers to file any additional forms or call the Department to qualify for the extension.

Executive Order 2020-27

This Executive Order, which took effect on March 27, 2020, pertains to elections scheduled for May 5, 2020. The Order does the following:

- Temporarily suspends Chapters 28 (Holding of Elections) and 29 (Canvass by the Precinct Inspectors) of the Michigan Election Law for the May 5, 2020 election.
- Requires elections on May 5, 2020, to be conducted to the greatest extent possible by absent voter ballots issued and submitted without in-person interaction; however, each jurisdiction must maintain at least one location on election day where a voter can appear in-person to receive and submit a ballot.
- Requires local clerks, county clerks, or election administrators with an election on May 5, 2020, to begin preparations to conduct that election primarily by mail, including the preparation of postage-paid absent voter ballot return envelopes for the return of voted ballots.

An individual who possess the qualifications of an elector under the Michigan Election Law who is not registered to vote but wants to register and vote in the May 5, 2020, election is encouraged to register online or by mail by April 20, 2020, and is strongly discouraged from in-person registration at clerk offices. After April 20, 2020, an individual who is not registered to vote but wants to register and vote in the May 5, 2020 election, may apply to register to vote at the office of the clerk of the city or township in which he or she resides during the hours in which the clerk's office is open.

An individual seeking to register to vote in-person at the office of the clerk of the city or township in which he or she resides is strongly encouraged to contact the clerk's office before doing so. Beginning on April 21, 2020, and continuing through May 5, 2020, city or township clerks may accept copies of applications to register to vote and residency verifications by mail, email, or facsimile for purposes of registration and verification by the clerk. All individuals must use best practices to mitigate the spread of COVID-19. An application to register to vote that is properly submitted by a voter residing in a jurisdiction holding an election on May 5, 2020, also must be considered a request for an absent voter ballot for the May 5, 2020, election.

The Order also temporarily suspends strict compliance with Section 646a of the Election Law for the limited purpose of permitting a political subdivision of the State that has certified a ballot question for placement on the ballot on May 5, 2020, to withdraw it. Removal of the question must be by the same method used by the local legislative body to certify it to the ballot. If the county clerk is notified of the withdrawal by March 27, 2020, the ballot question may not be canvassed for the May 5, 2020, election. Ballot questions removed from a May 5, 2020, election may be submitted to voters at the August 4, 2020, or a later election date.

The Order states that the Department of State may assist local clerks, county clerks, and election administrators with the mailing of absent voter ballot applications with a postage-prepaid, pre-addressed return envelope to each registered voter within any jurisdiction conducting a May 5, 2020, election; the preparation of postage-prepaid absent voter ballot return envelopes; the coordination of county and state assistance in processing ballots; changes to election dates; and other local clerk functions to the extent local jurisdictions are unable to perform them.

Executive Order 2020-28

Effective on March 28, 2020, and continuing until the termination of the state of emergency, the Order requires a public water supply to restore water service to any occupied residence where water service has been shut off because of nonpayment, as long as the supply does not have reason to believe that reconnection would create a risk to public health. A public water supply must make best efforts to determine which occupied residences within its service areas do not have water service. If a public water supply determines that an occupied residence within its service area has had water service shut off for any reason other than nonpayment or that reconnection would create a public health risk, it must make best efforts to remedy the condition and restore service to the residence as soon as possible.

As soon as possible and no later than April 12, 2020, each public water supply that has used water shutoffs as a remedy for nonpayment within the last year must report to the State Emergency Operations Center regarding water access in its service area. The report must include the following:

- An account of the efforts that have been made to determine which occupied residences within the public water supply's service area do not have water service.
- The number of occupied residences within the service area that do not have water service as a result of a shutoff because of nonpayment.
- The number of occupied residences within the service area that do not have water service as a result of a reason other than nonpayment.
- A certification that the public water supply has complied with the Order's requirements.

If a public water supply submits a report that does not comply with the requirements listed above, the water supply must submit a supplemental report every 30 days until it submits a compliant report. The Order does not abrogate the obligation of a resident to pay for water, does not prevent a water supply from charging a customer for water service, and does not reduce the amount a resident may owe to a public water supply.

Executive Order 2020-29

Effective March 30, 2020, and continuing through April 26, 2020, at 11:59 PM, the Order implements limited and temporary COVID-19-related protocols and procedures regarding entry into facilities operated by the Michigan Department of Corrections and transfers to and from the Department's custody. Similar protocols and procedures must be implemented at county jails, local lockups, and juvenile detention centers. The Order also temporarily suspends certain rules and procedures to facilitate the implementation of these procedures.

Michigan Department of Corrections. The Department must continue to implement risk reduction protocols to address COVID-19, which the Department has already developed and implemented at the facilities it operates, including the following:

- Screening all individuals arriving at or departing from a facility in a manner consistent with CDC guidelines (which includes obtaining a temperature reading and information about travel and any contact with individuals under investigation for COVID-19 infection).
- Restricting all visits, except for attorney-related visits, and conducting those visits without physical contact to the extent feasible.

- Limiting off-site appointments for incarcerated individuals to only urgent or emergency medical treatment.
- Developing and implementing protocols for incarcerated individuals who display symptoms of COVID-19, including methods for evaluation and processes for testing, isolation during testing, while awaiting results, and in the event of a positive test.

Also, the Order requires the Department to notify the DHHS of any suspected case that meets the criteria for COVID-19; provide appropriate personal protective equipment (PPE) to all staff; conduct stringent cleaning of all areas and surfaces; ensure access to personal hygiene products for incarcerated individuals and correctional staff; post signage and continually educate on the importance of social distancing and personal hygiene; practice social distancing in all programs and classrooms; and minimize crowding, including interactions of groups of 10 or more.

County Jails and Transfers. To mitigate the risk of COVID-19 spreading in county jails, strict compliance with the capacity and procedural requirements regarding county jail overcrowding states of emergency in the County Jail Overcrowding Act (CJOA) is temporarily suspended. While the Order is in effect, all actions that would be authorized under the CJOA in the event of a declaration of a county jail overcrowding state of emergency are authorized and will remain authorized without regard to any reduction in jail population. Anyone authorized to act under the Order is strongly encouraged to consider early release for all of the following, so long as they do not pose a public safety risk:

- Older individuals, individuals with chronic conditions or who are otherwise medically frail, individuals who are pregnant, and individuals nearing their release dates.
- Anyone incarcerated for a traffic violation.
- Anyone incarcerated for failure to appear or failure to pay.
- Anyone with behavioral health problems who can safely be diverted for treatment.

The Order also temporarily suspends all transfers into the custody of the Department of Corrections. Beginning seven days from the Order's effective date, and no more than once every seven days, a county jail or local lockup may request that the Director of the Department determine that the jail or lockup has satisfactorily implemented risk reduction protocols as described above. If the Director determines this is the case, transfers from that jail or lockup will resume in accordance with the Department's risk reduction protocols. The Director may reject transfers that do not pass the screening protocol for entry into a facility operated by the Department.

Additionally, the Order does the following:

- Prohibits parole violators in the Department's custody from being transported to or lodged in a county jail or local lockup unless the Director has determined that the county jail or local lockup has satisfactorily implemented risk reduction protocols.
- Requires the State Budget Office to seek a legislative transfer so that counties may be reimbursed for lodging incarcerated individuals that would have been transferred into the Department's custody if not for the suspension of transfers.
- Encourages juvenile detention centers to reduce the risk of exposure to COVID-19 for those in their facilities by implementing the following measures: removing from the general population any juveniles who have COVID-19 symptoms; eliminating any form of juvenile detention or residential facility placement for juveniles unless a determination is made that a

juvenile is a substantial and immediate safety risk to others; providing communications to all juveniles at such facilities regarding COVID-19, access to medical care, and community-based support; and to the extent feasible, facilitating access to family, education, and legal counsel through electronic means at no cost.

Unless otherwise directed by court order, for juveniles on court-ordered probation, the use of out-of-home confinement for technical violations of probation and any requirements for in-person meetings with probation officers are temporarily suspended.

Executive Order 2020-30

Effective March 30, 2020, Executive Order 2020-30 temporarily suspends compliance with laws and regulations relating to the provision of medical services during the course of the COVID-19 pandemic. The Order allows for a greater scope of practice by health care professionals and students and temporarily suspends a number of regulations related to the provision of care at designated health care facilities. Additional authority is given to these facilities with regard to the employment and use of professionals and volunteers in response to the pandemic. Certain licensing requirements for health professionals and others are temporarily suspended.

Regulation of the Provision of Medical Services. The Executive Order temporarily suspends all provisions of Article 15 (Occupations) of the Public Health Code that relate to scope of practice, supervision, and delegation for health care professionals to the extent necessary for those individuals to provide medical services at the designated health care facility at which he or she is employed or contracted. The Order states that the services provided should be appropriate to the professional's education and skills as determined by the facility.

Under the EO, the services may be provided at a designated health facility without the supervision of a licensed physician and in the absence of a written practice agreement. Individuals performing these services will not be subject to the penalties normally applied for lack of supervision or agreements.

Designated health care facilities are temporarily authorized to allow students enrolled in programs to become licensed, registered, or certified health care professions to work or volunteer to respond to the COVID-19 pandemic. Facilities also are permitted to allow medical students, physical therapists, and emergency medical technicians to act as respiratory therapist extenders, provided they are supervised by a physician, respiratory therapist, or advanced practice registered nurse. A clinical affiliation agreement is not required for either of these actions, and these provisions are in effect regardless of any other laws, regulations, or executive orders.

Facilities also are permitted to use qualified volunteers and personnel associated with other facilities and to adjust their scope of practice as necessary. The Director of the Department of Health and Human Services may establish terms and conditions to further govern this provision. The Executive Order extends to unlicensed volunteer or students at a designated health care facility who works or volunteers to assist with the COVID-19 pandemic response the same rights and immunities given to State employees. These individuals are designated as personnel of a disaster relief force under Section 11 of the Emergency Management Act. Licensed health care professionals and designated health care facilities supporting Michigan's response to the pandemic are not liable for injuries sustained by an individual during the administration of those services, unless the injury or death is caused by gross negligence.

Licensure, Certification, and Registration Requirements. The Executive Order temporarily suspends several laws and regulations pertaining to a health care professional's obtaining or renewing a license, certification, or registration. A professional is not required to fulfill examination requirements if that exam has been canceled during the emergency declaration. If the Director of LARA has determined that fingerprinting locations are not available because of the present emergency, the fingerprinting requirement for health professionals' licensing is temporarily suspended. Employee fingerprinting requirements for the licensure or certification of hospitals, nursing homes, county medical care facilities, or psychiatric hospitals also is temporarily suspended. Professionals are not required to meet continuing education requirements while the emergency declaration is in effect.

In addition, the Executive Order suspends any provisions of Article 15 of the Code that would limit the ability of licensed health care professionals in good standing in any U.S. state or territory to practice in Michigan without penalty related to lack of licensure. Drug manufacturers and prescription drug wholesale distributors that are licensed and in good standing in another state are temporarily authorized to distribute and ship controlled substances to hospitals, licensed manufacturers, or wholesale distributors in Michigan.

If an individual's certification in basic life support, advanced cardiac life support, or first aid will expire during the course of the emergency declaration, those certifications will remain valid and active for the duration of the emergency. Deadlines for continuing education or training module completions for telecommunicators and trainee telecommunicators employed by primary public safety answering points are suspended for 60 days.

Executive Order 2020-31

The Order, effective March 30, 2020, and continuing through May 31, 2020, temporarily suspends Rule 4(g) of Regulation No. 564 (R 285.564.4(g)) of the Michigan Administrative Code. The Department of Agriculture and Rural Development (MDARD) must coordinate State compliance with the Order.

(Rule 4(g) prohibits the vapor pressure of gasoline from exceeding specified values, except as otherwise provided under the Motor Fuels Quality Act or by rule.)

Executive Order 2020-33

The Order declares a state of emergency and a state of disaster across the State of Michigan. The Emergency Management and Homeland Security Division of the 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 and state of disaster will be terminated when emergency and disaster conditions no longer exist and appropriate programs have been implemented to recover from the effects of the emergency and disaster, consistent with the legal authorities upon which the declaration is based and any limits imposed by those authorities, including Section 3 of EMA.

The Order rescinds and replaces Executive Order 2020-4 (which declared a state of emergency for the State of Michigan, effective March 10, 2020). Executive Order 2020-33 states that all previous orders that rested on Executive Order 2020-4 rest on EO 2020-33.

Executive Order 2020-34

On April 2, 2020, Governor Whitmer issued Executive Order 2020-34. The EO places restrictions on veterinary services. This includes requiring the use of telemedicine as a replacement for in-person services whenever possible. This Order rescinds Executive Order 2020-32, which also placed restrictions on veterinary services.

Beginning no later than April 2, 2020, at 5:00 PM, and continuing for the duration of emergency declaration, veterinary facilities must develop and implement a plan for the temporary postponement of all in-person, nonessential veterinary services (as defined in the Order). Facilities must provide veterinary services by use of telemedicine whenever possible. Nonessential procedures and consultations that cannot be done through telemedicine must be postponed. Essential services may be performed in person if telemedicine is not a viable alternative.

Plans developed by veterinary facilities must require the facility to minimize the use of personal protective equipment that could be used for the care and treatment of human patients for the length of the declared emergency.

The Director of LARA must issue any orders or directives necessary to enforce the EO.

The EO specifies that these directives do not prohibit the vaccination of animals and do not relieve an animal owner from any law or regulation requiring the vaccination of an animal. In addition, the EO does not affect or change a veterinary facility's legal obligations to its own or other employers' employees.

A willful violation of the Order is a misdemeanor.

Violations of Orders

Executive Orders 2020-17, 2020-19, 2020-21, 2020-23, 2020-25, and 2020-34 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 2020-17

The Executive Order would have no fiscal impact on LARA and no fiscal impact on local government units. The administration and enforcement of the EO will be sufficiently funded and performed by existing appropriations and staff.

Executive Order 2020-19

The order would have a negligible fiscal impact on local law enforcement, as it would prohibit, for a period of time, a required action that is taken only occasionally.

Local law enforcement officials do not evict tenants without a writ of eviction. Very few, if any, of these writs are being issued by district courts on account of the Supreme Court's Administrative Orders, which adjourn all civil hearings, unless conducted remotely, until April 30, 2020. Under this order, no new writs of eviction will be issued unless those hearings are conducted remotely, which is highly unlikely. The order may, however, prevent evictions for writs that were already issued in the weeks before Administrative Order 2020-2 was issued, which was March 18, 2020.

Executive Order 2020-21

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 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 could be significant and would affect revenue in both fiscal year (FY) 2019-20 as well as FY 2020-21 (when annual payments are due and/or reconciled).

The Department of State could 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 2020-22

This Executive Order will have no fiscal impact on State or local government, as the Order only extends certain deadlines.

Executive Order 2020-23

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 2020-25

The Executive Order likely will not have a significant fiscal impact on LARA. The Department may see increased administrative costs because of increases in the number of individuals seeking information regarding the Order, but it is unknown at the present time if the cost of providing guidance and monitoring compliance will require any additional appropriations.

Executive Order 2020-26

The Executive Order will have an indeterminate, but likely negligible, fiscal impact on the State and cities that levy a city income tax. For the State, and local units that use a fiscal year that does not end on June 30, the Order would shift the timing of payments within the fiscal year. As a result, while the State and these local units may experience cash flow issues, the Order will not affect fiscal year revenue. For local units with fiscal years ending June 30, the Order could shift FY 2019-20 revenue into FY 2020-21 if the local unit uses cash accounting rather than accrual accounting. While most of the 22 local units that levy an income tax have fiscal years that end on June 30, the number that use cash accounting, rather than accrual accounting, is unknown.

Both the State and local units affected by the Order also likely will experience a reduction in revenue from penalties and interest associated with late payments. The magnitude of any revenue loss will depend on when taxpayers ultimately file their returns, the amounts due, and whether the Department otherwise would have elected to waive penalties and interest under existing authority. But, by suspending the interest on delayed refund payments, the State will incur fewer expenses regarding refund payments.

Operationally, by extending the filing and payment deadline for State and city income taxes, departments that process tax returns will have additional costs in the summer month that they otherwise would not have experienced, however, these additional costs will be offset by fewer expenses experienced in April. Overall administrative costs or savings will be minimal and within current appropriations.

Executive Order 2020-27

The Department of State will incur costs for assisting local clerks, county clerks, and election administrators with the mailing of absent voter applications and voter ballots. The estimated costs primarily are related to the mailing. The estimated per parcel cost for the mailing of absent voter applications and the pursuant ballots, including the postage-prepaid return envelopes, is 55 cents to \$1. The actual cost is indeterminate and will depend on the actual number of applications and ballots that ultimately are mailed and returned. Estimates range between \$750,000 to \$1.0 million

for costs related to temporary suspension of various provisions of the Michigan Election Law pursuant to Executive Order 2020-27.

Executive Order 2020-28

The Order will have a negative fiscal impact on the State and local governments, although the effect will be disproportionate for certain communities. The costs to local governments that operate a public water system will include the cost to reconnect residents' water service, increased nonpayment during the state of emergency, and increased administrative costs. It is not known how many homes currently have water service disconnected and will need to be reconnected under the Order, but the Natural Resources Defense Council has recently estimated that more than 15,000 homes are currently shut off in the cities of Detroit and Flint. It also is not known how many residents will fail to make payments while the Order is in effect, but the combination of shutoff suspensions and current economic stress suggests the delinquency rate will rise to some extent. The City of Detroit began more aggressive collection enforcement in 2014. Before that campaign, the delinquency rate was often 25 to 30 percent, and it has recently been between five and eight percent. The additional reporting requirements, while not insignificant, will be handled under current appropriations.

Separately, though related to this Order, the State has established a \$2.0 million fund through the Department of Environment, Great Lakes, and Energy to provide funding to help communities reconnect water. The Water Restart Grant Program will provide funding to local communities using existing appropriations from the Renew Michigan fund. Grants will be provided to high-risk areas and allow for up to \$5,000 per home for reconnection, line replacement, and restoration. Exceptions may be authorized for homes needing more extensive work. A 25-percent local match is required for the grants, and the grants must be provided on a reimbursement basis after receipt of supporting documentation.

Executive Order 2020-29

The Department of Corrections indicates that there will be no meaningful cost or cost savings. While some incarcerated individuals may be released early under the Order, the cost avoidance for that inmate will be negated by incoming new prisoners. Under the Order, no transfers to the Michigan Department of Corrections are allowed until the county jail has been certified by the Department that it has implemented the proper protocols. The reimbursement rate for a person held at a county jail ranges from \$40-65 per night, depending on the level of prisoner held. Jails will be compensated for housing these inmates. Once those inmates are released to the Department's custody, the county jails will no longer be reimbursed by the Department. The initial \$40-\$65 per day reimbursement paid by the Department will be negated by the cost avoidance of an average of \$50 per day for inmates who are released early.

Language used in Executive Order 2020-29 creates two uncertainties that could affect the fiscal impact of the Order. The first uncertainty, and likely the most important consideration, is that the language used in the Order states that juvenile detention centers are "strongly encouraged" to impose certain risk-reduction measures. This language is not mandatory in nature, compared with earlier portions of the order that pertain to the Michigan Department of Corrections, in which the language requires the Department to continue to implement risk reduction protocols. "Must" denotes a requirement whereas "strongly encouraged" does not imply the same level of requirement. The second uncertainty is the term "juvenile detention center", is not defined in

statute. Terms that are used in statute include "juvenile detention facility",² "juvenile detention home",³ or "child caring institution".⁴ The Order does mention "juvenile detention or residential facility placement" in Section 7(b), which is similar to terms defined under State statute. However, this reference in Section 7(b) creates additional uncertainty, as it states that "juvenile detention centers" are "strongly encouraged" to eliminate any form of detention or residential facility placement for juveniles unless a determination is made that a juvenile is a substantial and immediate safety risk to others. "Juvenile detention centers" or entities that fit within any similar term used under State statute, do not have the authority to make placement decisions for youth in care. The Probate Code reserves to the judicial branch authority and jurisdiction for youth under 17 years of age (as of October 1, 2021, this will increase to youth under 18 years of age), so it is not clear how the "juvenile detention centers" listed in the order are able to make placement decisions extrajudicially.

It is probable that even under the seemingly voluntary nature of the Order and the uncertainty of the Order's application to existing juvenile facilities (State-operated, county-operated, and privately operated), some or even all will heed the risk-reduction measures stated in the Order and will incur fiscal costs. Since it is not clear to what extent those entities will implement the measures, the cost is uncertain. There are two State-operated juvenile detention facilities, Bay Pines Center and Shawono Center, and it is likely that these facilities will implement the risk-reduction measures outlined in the Order.

Section 8 of the Order states that, unless otherwise directed by court order, for those juveniles on probation, the use of out-of-home confinement for technical violations and requirements for in-person meeting are temporarily suspended. As a result, State and local units of government may realize fiscal saving from a reduction in placements for technical probation violations.

Executive Order 2020-30

The Executive Order will not have a significant fiscal impact on State government. Additional administrative, communication, and regulatory costs as a result of the Order are unknown, but those expenses likely will be covered by existing appropriations. The magnitude of these costs will be determined by inquiries, requests, and cases requiring departmental responses.

Executive Order 2020-31

The Order will have a negligible fiscal impact on MDARD, as it extends certain standards for gasoline, an industry compliance requirement that is already routinely measured as part of the Department's current workload.

Executive Order 2020-33

As with EO 2020-4, issued on March 10, 2020, when the 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. At the SEOC, personnel monitor (on a 24-hour basis) ongoing emergencies,

² MCL 400.117a.amended(1)(g)

³ MCL 712A.16

⁴ MCL 722.111(1)(c)

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 or remotely at the Center to coordinate the State's response. This participation will continue under EO 2020-33. As expected, the DHHS has had 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 others, especially those departments that have facilities that the public may visit. The overall costs as a result of the Governor's EO 2020-33 cannot easily be determined, as it continues to give the Governor broad powers to order departments to engage in certain tasks and responsibilities that likely will go well beyond their current appropriations.

Salary costs of employees who serve within the SEOC from various departments, and other statewide costs created by the Governor's broad powers taken under an emergency declaration may be paid by several sources. Funding sources for these expenditures 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 that initially 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 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, but in some instances with 100% Federal support).

Executive Order 2020-34

The Executive Order will have no fiscal impact on the Department of Licensing and Regulatory Affairs or local units of government. Administrative and enforcement obligations will be performed by current staff and costs will be sufficiently covered by existing appropriations.

Conclusion

The Executive Orders summarized above maintain 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, and LARA.

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

/lms

c: Christopher Harkins, Director