OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR

MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: Thursday, May 7, 2020
RE: Directive implementing Executive Orders 2-2020 and 3-2020 and providing for measures to combat the impacts of COVID-19 by responding to immediate food and energy needs

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

Section 10-3-104(2)(a), MCA, authorizes the Governor, during a state of emergency, to "suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster." Further, "all officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request" in responding to the emergency. Section 10-3-305(2), MCA. In furtherance of these authorities, the Governor may issue "executive orders, proclamations, and regulations." Section 10-3-104(3), MCA.

Additionally, the Department of Public Health and Human Services (DPHHS or Department), acting under the Governor's direction, has authority to administer and supervise the provision of public assistance, including the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Sections 53-2-201(1) and 53-2-901, MCA.

An unfortunate result of the pandemic is that many Montana families and children now face food insecurity due to lost jobs and lost income. The federal Families First Coronavirus Response Act (FFCVRA), Pub. L. 116-27, and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-37, expand federal appropriations and afford flexibility to states in many areas related to food and nutrition assistance. Accordingly, the federal government has granted Montana multiple waivers to requirements for the SNAP and the WIC programs. I have chosen to utilize this flexibility to ensure that Montanans do not go hungry during the emergency by directing DPHHS to significantly increase Montana's supply of federal food commodities to be provided at no cost to people in need through local distribution outlets. I have also directed DPHHS to provide additional flexibility in the WIC program to ensure services and food availability.

Moreover, although I took prior action related to disconnection of basic utilities in prior Directives, Montanans may continue to struggle with home heating and energy needs beyond the date when the moratorium on utility disconnections ends. Accordingly, I have determined to take additional measures within the Low-Income Energy Assistance Program (LIEAP) to ensure energy security during the COVID-19 emergency.

To the extent that current statutes and administrative rules imposing SNAP, WIC, and LIEAP time limits, renewal guidelines, and other requirements are inconsistent with the flexibility afforded by the federal government for responding to this emergency, I have determined that strict compliance with the provisions of those statutes and rules would prevent, hinder, or delay necessary actions in coping with the emergency.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the following measures be in place in the State of Montana effective immediately:

I. Service Under SNAP Program Expanded as Authorized by Section 2302 of the Families First Coronavirus Response Act (P.L. 116-127)

- The Department is directed to make emergency allotments and modify SNAP program requirements that could prevent or impede the provision of essential services to participants.
- Interviews for SNAP applications are waived through May 31, 2020, or the end of the emergency, whichever is sooner. Applicant identity and other mandatory verifications remain in place.
- SNAP recertifications that are due in March, April, May and June are to be automatically extended for six months.
- Time limits for Able-Bodied Adults Without Dependents benefits are temporarily suspended.
- SNAP benefits are temporarily increased to the maximum allotment through May 31, 2020, or the end of the emergency, whichever is sooner.
- SNAP overpayment collections are deferred for the duration of the emergency.
- Only to the extent necessary to take the above emergency actions, strict compliance with the following authorities is hereby suspended for the duration of the emergency:
    - Provisions of Title 53, Chapter 2, Part 9, MCA, but only to the extent there is a specific conflict with the purposes of this Directive.
    - Provisions of Title 37, Chapter 2, ARM, related to department procedures and block grants, but only to the extent there is a specific conflict with the purposes of this Directive.
    - Any other statute or administrative rule to the extent that it would impede the Department's efforts to take the measures set forth in this Directive, but only to the extent there is a specific conflict with the purposes of this Directive.

II. Service Under WIC Program Expanded as Authorized by Section 2302 of the Families First Coronavirus Response Act (P.L. 116-127).

- The Department is directed to waive WIC program requirements that could prevent or impede the provision of essential services to participants.
- Substitutions on some WIC food items are permitted when supply or food storage issues are identified through May 31, 2020, or the end of the emergency, whichever is sooner.
- The physical presence of participants and applicants is not required for WIC certification through May 31, 2020, or the end of the emergency, whichever is sooner, because normal clinic operations requiring that people physically come into the clinic create an unnecessary risk.
- Existing benefits for supplemental foods requiring medical documentation may be extended for two months when health care provider documentation is unavailable.
- Only to the extent necessary to take the above emergency actions, strict compliance with the following authorities is hereby suspended for the duration of the emergency:

- Provisions of Title 37, Chapter 59, ARM, related to the WIC program, but only to the extent there is a specific conflict with the purposes of this Directive.
- Provisions of Title 37, Chapter 75, ARM, related to child and adult food care, but only to the extent there is a specific conflict with the purposes of this Directive.
- Any other statute or administrative rule to the extent that it would impede the Department's efforts to take the measures set forth in this Directive, but only to the extent there is a specific conflict with the purposes of this Directive.

III. Emergency Food Assistance Expanded

- Consistent with the stated goal of this Directive that Montanans do not go without sufficient food during the emergency, the Department is directed to take the following additional steps to bolster food assistance.
- The Emergency Food Assistance Program is directed to allow low-income Montanans access to additional food resources through the Montana Food Bank Network.
- The Department shall increase food supply and distribution for the Emergency Food Assistance Program, the Food Distribution Program on Indian Reservations, and the Commodity Supplemental Food Program to target assistance to those areas with the greatest need.
- Only to the extent necessary to take the above emergency actions, strict compliance with the following authorities is hereby suspended for the duration of the emergency:
  - Provisions of Title 37, Chapter 75, ARM, related to child and adult food care, but only to the extent there is a specific conflict with the purposes of this Directive.
  - Provisions of Title 37, Chapter 76, ARM, related to food and nutrition services, but only to the extent there is a specific conflict with the purposes of this Directive.
  - Any other statute or administrative rule to the extent that it would impede the Department's efforts to take the measures set forth in this Directive, but only to the extent there is a specific conflict with the purposes of this Directive.

IV. Energy Security Assistance Expanded Consistent with Federal Partnership to Address the Spread of COVID-19 Guidance.

- The Department is directed to take the following measures to meet the energy security needs of Montanans.
- An emergency LIEAP season from May 1 to August 30, 2020, shall be implemented in order to aid existing and new LIEAP members with home energy bills during the emergency.
- Unused benefits on existing LIEAP member accounts shall be applied to account balances beyond the normal reversion date of April 30, 2020.
- Supplemental benefits to existing LIEAP members and new members whose wages have been affected by the COVID-19 emergency shall be provided through August 30, 2020.
- A one-month income verification "look back" period shall be used for new eligibility determinations rather than the standard six-month period to allow those facing current loss of employment due to COVID-19 to access emergency energy assistance.
- Only to the extent necessary to take the above emergency actions, strict compliance with the following authorities is hereby suspended for the duration of the emergency:
  - Any provision of Title 37, Chapter 70, ARM, related to LIEAP administration, but only to the extent there is a specific conflict with the purposes of this Directive.

Authorities: Sections 10-3-103, -104, -302, and **-305, MCA; §§ 50-1-202, 53-2-202, -203, -207, -305, -901, -903,** and **-904, MCA;** Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- Nothing in this Directive shall be construed to limit, modify, or otherwise affect the authority granted by law to the Governor, the Department, any department, agency, political subdivision, officer, agent, or employee of the State of Montana except as expressly provided in this Directive or other Directives now in effect implementing Executive Orders 2-2020 and 3-2020.
- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.