STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

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EXECUTIVE ORDER

No. 2020-93

Temporary enhancements to operational capacity, flexibility, and efficiency of pharmacies

Rescission of Executive Order 2020-56

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the Emergency Powers of the Governor Act, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the Emergency Management Act.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations,

and directives having the force and effect of law." MCL 30.403(1)–(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

To respond effectively to the urgent and steep demands created by this pandemic, the public requires increased access to therapeutic pharmaceuticals. Meeting this critical need requires swiftly but safely expanding access to pharmacy services. To that end, it is reasonable and necessary to provide temporary and limited relief from certain regulatory restrictions regarding pharmacies in order to enhance their operational capacity, flexibility, and efficiency.

Executive Order 2020-25 provided such relief. Executive Order 2020-56 extended its duration. This order extends its duration further, as it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents. With this order, Executive Order 2020-56 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Pharmacists located in any county in this state may dispense emergency refills of up to a sixty (60) day supply of any non-controlled maintenance medication for residents of any county in this state if, in the pharmacist's professional judgment, failure to refill the prescription might interrupt the patient's ongoing care and have a significant adverse effect on the patient's well-being.

2. The following shall apply to all emergency refills dispensed under section 1 of this order:

   (a) The pharmacist must inform the patient that the prescription was refilled under section 1 of this order.

   (b) The pharmacist must inform the prescriber in writing within a reasonable period of time of any refills the pharmacist dispensed under section 1 of this order.

   (c) Prior to refilling a prescription under section 1 of this order, the pharmacist, clinic, or mobile pharmacy must make every reasonable effort to communicate with the prescriber regarding the refilling of the prescription. The pharmacist must make an appropriate record of that effort, including the basis for proceeding under section 1 of this order.

   (d) A prescriber must not incur any criminal or civil liability or licensing disciplinary action as the result of a pharmacist refilling a prescription under section 1 of this order.

3. Pharmacists may temporarily operate a pharmacy in an area not designated on the pharmacy license, but they may not prepare sterile drug products beyond low-risk preparations, as defined by USP standards, for immediate inpatient administration in such temporary facilities.

4. Pharmacists may dispense and/or administer drugs as needed to treat COVID-19 pursuant to 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 Department of Health and Human Services or her designee.

5. Pharmacists may substitute a therapeutically equivalent medication for a medication subject to critical shortages without the authorization of a prescriber. The pharmacist must inform the patient of any such substitution. The pharmacist must inform the prescriber within a reasonable period of time of any prescriptions or refills dispensed under this section. A prescriber must not incur any criminal or civil liability or licensing disciplinary action as the result of a pharmacist filling or refilling a prescription under this section.

6. To increase the number of pharmacists who can serve patients during this time of need, preceptors may supervise student pharmacists remotely to fulfill eligibility for licensure and avoid delaying graduation.

7. Insurers and health maintenance organizations issuing health insurance or disability insurance policies that provide prescription drug benefits must cover any emergency refills of covered prescription drugs dispensed by a pharmacist under section 1 of this order. Insurers and health maintenance organizations must also allow for early refills of all 30-day or 60-day covered prescription maintenance medications to allow for up to a 90-day supply to be dispensed by a pharmacy, without regard to whether the pharmacy is mail-order or in-person. Insurers and health maintenance organizations may still apply policy or contract provisions governing out-of-network benefits and cost-sharing.

8. Pharmacists may supervise pharmacy technicians and other pharmacy staff remotely. Supervision must be conducted through a real-time, continuous audiovisual camera system, capable of allowing the pharmacist to visually identify the markings on tablets and capsules. The pharmacist must have access to all relevant patient information to accomplish the remote supervision and must be available at all times during the supervision to provide real-time patient consultation. A pharmacy technician may not perform sterile or nonsterile compounding without a pharmacist on the premises.

9. Pharmacies holding a license, certificate, or other permit in good standing issued by another state must be deemed licensed to do business in this state. These out-of-state licensed pharmacies must not deliver controlled substances into this state; must abide by all Michigan regulations applicable to the practice of pharmacy, but need not have a pharmacist-in-charge with a license to practice in Michigan; and must hold a current accreditation from a national organization approved by the Michigan Board of Pharmacy before providing sterile compounding services to patients in this state.

10. Wholesale distributors holding a license, certificate, or other permit in good standing issued by another state must be deemed licensed to do business in this state. These out-of-state wholesale distributors must not deliver controlled substances into this

state and must abide by all Michigan regulations applicable to a Michigan-licensed wholesale distributor.

11. To the extent any statutes, rules, or regulations may be inconsistent with this order, strict compliance with them is temporarily suspended. This includes, but is not limited to: sections 17707(5), 17739(2)(c), 17739a(3), 17741(1)-(2), 17743, 17748, 17748a, 17748b, 17751, 17755(3), and 17763(b) of the Public Health Code, 1978 PA 368, as amended, MCL 333.17707(5), 333.17739(2)(c), 333.17739a(3), 333.17741(1)-(2), 333.17743, 333.17748, 333.17748a, 333.17748b, 333.17751, 333.17755(3), and 333.17763(b); and Rules 338.473(2), 338.473a(5)(a), 338.477(1)-(2), 338.482(2)-(3); 338.486(1)(b), 338.486(3), 338.489(3), 338.490(3), 338.490(4)(a), 338.490(5), 338.3041(4), and 338.3162(1) of the Michigan Administrative Code.

12. This order is effective immediately and continues through June 16, 2020 at 11:59 pm.

13. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

14. Executive Order 2020-56 is rescinded.

Given under my hand and the Great Seal of the State of Michigan.

Date: May 19, 2020

Time: 11:56 am

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE