STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

SECRETARY OF SENATE
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EXECUTIVE ORDER

No. 2020-61

Temporary relief from certain restrictions and requirements governing the provision of medical services

Rescission of Executive Order 2020-30

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.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the 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.

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).

Responding effectively to the urgent and steep demands created by the COVID-19 pandemic will require the help of as many health care professionals as possible, working in whatever capacities are appropriate to their respective education, training, and experience. To ensure health care professionals and facilities are fully enabled to provide the critical assistance and care needed by this state and its residents during this unprecedented emergency, it is reasonable and necessary to provide limited and temporary relief from certain restrictions and requirements governing the provision of medical services.

Executive Order 2020-20 provided this relief. This order extends its duration and expands its scope, as it remains reasonable and necessary to provide flexibility to allow health professionals to practice with fewer restrictions and requirements.

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

1. Any and all provisions in Article 15 of the Public Health Code, 1978 PA 368, as amended, MCL 333.16101 et seq., relating to scope of practice, supervision, and delegation, are temporarily suspended, in whole or part, to the extent necessary to allow licensed, registered, or certified health care professionals to provide, within a designated health care facility at which the professional is employed or contracted to work, medical services that are necessary to support the facility's response to the COVID-19 pandemic and are appropriate to the professional's education, training, and experience, as determined by the facility in consultation with the facility's medical leadership.

   (a) Medical services may be provided under this section without supervision from a licensed physician, without regard to a written practice agreement with a physician, and without criminal, civil, or administrative penalty related to a lack of supervision or to the lack of such agreement.

   (b) The suspensions of Article 15 under this section include, but are not limited to, the following:

      (1) Parts 170, 175, and 180, and related provisions, MCL 333.17001 et seq., MCL 333.17501 et seq., and MCL 333.18001 et seq., as they relate to scope of practice, supervision, and delegation, to the extent necessary to permit physician assistants to provide medical services appropriate to the professional's education, training, and experience, without a written practice agreement with a physician and without criminal, civil, or administrative penalty related to a lack of such agreement.

      (2) Parts 170, 172, and 175, and related provisions, MCL 333.17001 et seq., MCL 333.17201 et seq., and MCL 333.17501 et seq., as they relate to scope of practice, supervision, and delegation, to the extent necessary to permit advanced practice registered nurses, as defined in MCL 333.17201 and including nurse anesthetists, to provide medical services appropriate to the professional's education, training, and experience, without physician supervision and without criminal, civil, or administrative penalty related to a lack of such supervision.

(3) Parts 170, 172, and 175, and related provisions, MCL 333.17001 et seq., MCL 17201 et seq., and MCL 17501 et seq., as they relate to scope of practice, supervision, and delegation, to the extent necessary to permit registered nurses and licensed practical nurses to order the collection of throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing.

(4) Part 172 and related provisions, MCL 333.17201 et seq., as they relate to scope of practice, supervision, and delegation, to the extent necessary to permit licensed practical nurses to provide medical services appropriate to the professional's education, training, and experience, without registered nurse supervision and without criminal, civil, or administrative penalty related to a lack of such supervision.

(5) Part 177 and related provisions, MCL 333.17701 et seq., as they relate to scope of practice, supervision, and delegation, to the extent necessary to permit licensed pharmacists to provide care for routine health maintenance, chronic disease states, or similar conditions, as appropriate to the professional's education, training, and experience, without physician supervision and without criminal, civil, or administrative penalty related to a lack of such supervision.

(c) Nothing in this section diminishes the ability of unlicensed health care professionals to practice in Michigan under section 16171 of the Public Health Code, MCL 333.16171, which provides certain exceptions to licensure and which remains in full force and effect.

2. Notwithstanding any law, regulation, or executive order to the contrary, and without the need for a clinical affiliation agreement, a designated health care facility is temporarily authorized:

(a) To allow students who are enrolled in programs to become licensed, registered, or certified health care professionals to volunteer or work within the facility in whatever roles that are necessary to support the facility's response to the COVID-19 pandemic and are appropriate to the student's education, training, and experience, as determined by the facility in consultation with the facility's medical leadership.

(b) To allow medical students, physical therapists, and emergency medical technicians to volunteer or work within the facility as "respiratory therapist extenders" under the supervision of physicians, respiratory therapists, or advanced practice registered nurses. Such extenders may assist respiratory therapists and other health care professionals in the operation of ventilators or related devices. Nothing in this section shall be taken to preclude such extenders from providing any other services that are necessary to support the facility's response to the COVID-19 pandemic and are appropriate to their education, training, and experience, as determined by the facility in consultation with the facility's medical leadership.

3. Any and all provisions in Article 15 of the Public Health Code, MCL 333.16101 et seq., are temporarily suspended, in whole or part, to the extent necessary to allow health care professionals licensed and in good standing in any state or territory in the United States to practice in Michigan without criminal, civil, or administrative penalty related to lack of licensure. A license that has been suspended or revoked is not considered a license in good standing, and a licensee with pending disciplinary action is not considered to have a license in good standing. Any license that is subject to a limitation in another state is subject to the same limitation in this state.

4. Notwithstanding any law, regulation, or executive order to the contrary, any drug manufacturer or wholesale distributor of prescription drugs licensed in another state whose license is in good standing is temporarily authorized to distribute and ship controlled substances into Michigan to a hospital or to a licensed manufacturer or wholesale distributor under section 17748 of the Public Health Code, MCL 333.17748. A license that has been suspended or revoked is not considered a license in good standing, and a licensee with pending disciplinary action is not considered to have a license in good standing. Any license that is subject to a limitation in another state is subject to the same limitation in this state.

5. Notwithstanding any law or regulation to the contrary, a designated health care facility is temporarily authorized to use qualified volunteers or qualified personnel affiliated with other designated health care facilities, and to adjust the scope of practice of these volunteers or personnel under section 1 or 2 of this order as if the volunteers or personnel were affiliated with the facility. This section is subject to any terms and conditions that may be established by the director of the Department of Health and Human Services.

6. Any unlicensed volunteers or students at a designated health care facility who perform activities in support of this state's response to the COVID-19 pandemic constitute personnel of a disaster relief force under section 11 of the Emergency Management Act, MCL 30.411, and, with respect to such activities, are entitled to the same rights and immunities as provided by law for the employees of this state, as provided under MCL 30.411(1)(c).

7. The licensing requirements of parts 170, 172, 175, and 187 of the Public Health Code, MCL 333.17001 et seq., MCL 333.17201 et seq., MCL 333.17501 et seq., and MCL 333.18701 et seq., are temporarily suspended to the extent necessary to allow the Department of Licensing and Regulatory Affairs (LARA) to issue an appropriate license that lasts for the duration of the declared states of emergency and disaster to any physician, physician assistant, registered professional nurse, licensed practical nurse, or respiratory therapist who (a) is licensed in good standing in another country, (b) has at least five years' practice experience, and (c) has practiced for at least one year in the last five years. LARA shall adopt a form for license applications under this section, containing such information and certifications as the director of LARA may require. The director of LARA may issue a license upon a finding that the applicant, by education, training, or experience, substantially meets the requirements for licensure of the Public Health Code.

8. Consistent with MCL 30.411(4), any licensed health care professional or designated health care facility that provides medical services in support of this state's response to the COVID-19 pandemic is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained, unless it is established that such injury or death was caused by the gross negligence, as defined in MCL 30.411(9), of such health care professional or designated health care facility.

9. Any law or regulation is temporarily suspended to the extent that it requires for any health care professional, as a condition of licensure, certification, registration, or the renewal of a license, certification, or registration:

   (a) An exam, to the extent that the exam's administration has been canceled while the emergency declaration is in effect.

   (b) Fingerprinting, to the extent that, in the judgment of the director of LARA, locations to have fingerprints taken are substantially unavailable on account of closures arising from the COVID-19 pandemic.

   (c) Continuing education while the emergency declaration is in effect.

10. Professional certifications of individuals in basic life support, advanced cardiac life support, and first aid shall continue to remain in effect while the emergency declaration is in effect, even if they are otherwise due to expire during the emergency.

11. Any deadlines for telecommunicators and trainee telecommunicators who are employed by primary public safety answering points to complete training modules or continuing education under Rules 484.803, 484.804, and 484.805 of the Michigan Administrative Code are suspended until 60 days after the termination of the declared states of emergency and disaster.

12. Strict compliance with rules and procedures under section 34b of the Adult Foster Care Facility Licensing Act, 1979 PA 218, as amended, MCL 400.734b, section 20173a of the Public Health Code, 1978 PA 368, as amended, MCL 333.20173a, and section 134a of the Mental Health Code, 1974 PA 258, as amended, MCL 330.1134a, is temporarily suspended to the extent necessary to permit a care facility to offer employment, a contract, or clinical privileges to any individual, provided the facility conducts a search of public records on that individual through the internet criminal history access tool (ICHAT) maintained by the Michigan State Police, and the results of that search do not uncover any information that would make the individual ineligible to have regular direct access to or provide direct services to patients or residents. Any requirement to obtain a criminal record check from the Federal Bureau of Investigation or a criminal history check from the Michigan State Police is suspended until 10 business days after the end of the declared states of emergency and disaster. Any law or regulation is temporarily suspended to the extent that it requires employee fingerprinting as a condition of licensure and certification for hospitals and county medical care facilities.

For purposes of this section, "care facility" means:

(a) An adult foster care camp, adult foster care congregate facility, or adult foster care facility, as those terms are defined in sections 3(2)–(4) of the Adult Foster Care Facility Licensing Act, MCL 400.703(2)–(4).

(b) A covered facility, as that term is defined in section 20173a(15)(c) of the Public Health Code, MCL 333.20173a(15)(c).

(c) A psychiatric hospital, as that term is defined in section 110b of the Mental Health Code, MCL 330.1100b(7).

13. For purposes of this order, "designated health care facility" means the following facilities, including those which may operate under shared or joint ownership:

(a) The entities listed in section 20106(1) of the Public Health Code, MCL 333.20106(1).

(b) State-owned surgical centers.

(c) State-operated outpatient facilities.

(d) State-operated veterans facilities.

(e) Entities used as surge capacity by any of the entities listed in subsections (a)–(d) of this section.

14. This order is effective immediately and continues until the end of the declared states of emergency and disaster.

15. Executive Order 2020-30 is rescinded.

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

Date: April 26, 2020

Time: 11:38 am

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE