STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

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EXECUTIVE ORDER

No. 2020-64

Affirming anti-discrimination policies and requiring certain health care providers to develop equitable access to care protocols

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).

The measures put in place by my executive orders have been effective in slowing the spread of COVID-19, but this virus is both aggressive and persistent: as of April 28, 2020, Michigan has reported 39,262 confirmed cases of COVID-19 and 3,567 deaths from it. Despite our efforts, the virus has the potential to overwhelm health care system capacity and require providers to make challenging decisions regarding how care is delivered.

Michigan has one of the finest health care systems in the country, and our medical professionals are performing heroically under trying circumstances. Our hospitals already consult with medical ethicists to make decisions that respect civil rights and uphold the essential duties of medicine in moments when demand for critical medical resources exceeds supply. Nevertheless, the unprecedented challenges posed by this pandemic have created a heightened need for clear, transparent protocols based on a common understanding of core values, including equitable access to care. I therefore find it reasonable and necessary to affirm anti-discrimination policies and establish procedures that ensure the equitable allocation of medical resources.

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

1. It is the public policy of this state that no person should be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person's relative "worth," including judgments about a person's worth based on the presence or absence of disabilities.

2. Health care providers shall take all necessary steps to ensure non-discrimination based on the characteristics described in section 4(a) in the delivery of critical care and allocation of other medical resources to those in need of treatment for physical and psychiatric illnesses.

3. Health care providers shall continue to support individuals' functional needs to the fullest extent possible. For purposes of this order, "functional needs" includes the needs for independence, communication, transportation, supervision, and medical care. When effective communication requires that a sign language interpreter be present, a sign language interpreter must be permitted to be present, and provided with appropriate PPE.

4. Designated health care facilities shall develop protocols that guide decision-making for medical care in cases where demand for critical medical resources exceeds availability, during the COVID-19 pandemic. Such protocols must enable clinical decision-making based on the best available objective medical evidence, including an individualized assessment of how each patient will respond to treatment. These protocols must also:

   (a) Prohibit medical decision-making based on social stigma or stereotypes regarding age, color, criminal history, disability, ethnicity, familial status, gender identity, height, homelessness, immigration status, incarceration status, marital status, mental illness, national origin, poverty, race, religion, sex, sexual orientation, socio-economic status, substance abuse disorder, use of government

resources, veteran status, or weight.

(b) Provide for coordinating and sharing information with DHHS regarding resource availability and transfer availability.

(c) Ensure that withholding or delaying care due to lack of critical resources is always a last resort.

(d) Require the protocols to be available upon request, and, whenever the protocols are in effect, posted on the internet.

5. For purposes of this order, a "designated health care facility" means a hospital or an entity used as surge capacity by one or more hospitals.

6. DHHS may issue orders and directives to implement this order.

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

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

Gretchen W Whitmer

GRETCHEN WHITMER
GOVERNOR

Date: April 29, 2020

Time: 5:00 pm

By the Governor:

SECRETARY OF STATE