STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

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Expanding child care access during the COVID-19 pandemic

Rescission of Executive Order 2020-84

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.

Those executive orders have been challenged in *Michigan House of Representatives and Michigan Senate v Whitmer*. On May 21, 2020, the Court of Claims ruled that Executive Order 2020-67 is a valid exercise of authority under the Emergency Powers of the Governor Act but that Executive Order 2020-68 is not a valid exercise of authority under the Emergency Management Act. Both of those rulings are being challenged on appeal.

On May 22, 2020, I issued Executive Order 2020-99, again finding that the COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan. That order constituted a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has declined to grant an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this executive order. In relevant part, it 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).

Nevertheless, subject to the ongoing litigation and the possibility that current rulings may be overturned or otherwise altered on appeal, I also invoke the Emergency Management Act as a basis for executive action to combat the spread of COVID-19 and mitigate the effects of this emergency on the people of Michigan, with the intent to preserve the rights and protections provided by the EMA. The EMA 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). This executive order falls within the scope of those powers and duties, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has not granted an extension request, they too provide a sufficient legal basis for this order.

To respond effectively to the urgent and steep demands created by this pandemic, providers of health care, emergency medical services, law enforcement, and other essential services require child care services for their children, particularly when schools and summer camps are closed. Meeting this critical need requires swiftly but safely expanding access to child care services. To that end, I issued Executive Order 2020-84 because it was reasonable and necessary to provide temporary and limited relief from certain regulatory restrictions regarding child care services, and to facilitate the use of certain property for those services.

This order extends policies of Executive Order 2020-84 for an additional 28 days, 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 by expanding access to child care services. With this order, Executive Order 2020-84 is rescinded.

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

1. Strict compliance with section 7a of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.117a, is suspended as follows:

   (a) A provisional license may be issued without submission to the Department of Licensing and Regulatory Affairs ("LARA") of an acceptable plan to overcome the

deficiency present in the child care organization within the time limitations of the provisional licensing period.

(b) A provisional license may be issued with an expiration date no earlier than one month after the date of issuance and no later than six months after the date of issuance, and may be renewed at the discretion of LARA until the end of the declared states of emergency and disaster.

2. Strict compliance with subsection (2) of section 5m of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.115m(2), is suspended, as follows:

   (a) An employer may establish and maintain a disaster relief child care center without a license from LARA.

   (b) A school district or a nonpublic school may establish and maintain a disaster relief child care center in a school building without a license from LARA.

3. LARA must issue rules and/or orders governing disaster relief child care centers.

   (a) A disaster relief child care center must comply with the requirements imposed by any LARA rules and orders governing disaster relief child care centers.

   (b) Such rules and/or orders must, at a minimum, require that disaster relief child care centers follow the safe sleep guidelines, including appropriate sleeping equipment for children under 12 months of age; follow applicable guidelines for diapering, handwashing, and sanitizing; provide porta-cribs, cots, or mats for children older than twelve months to sleep or rest; and solicit information about, and communicate with parents and guardians regarding, a child's medicine, allergies, including food allergies; and other special needs.

4. Disaster relief child care centers may operate in any school facilities operated by a school district or nonpublic school that are closed and are approved for student use. Early childhood staff, student teachers, teachers, and individuals who provide before and after care may provide child care in these settings. The Michigan Department of Education ("MDE") is authorized to credit the hours that student teachers work toward teacher preparation graduation requirements and MDE licensure requirements.

5. Rule 400.8110(5) of the Michigan Administrative Code is suspended for disaster relief child care centers. Notice of any change in capacity and age groups must be provided to LARA.

6. Insofar as section 11 of the Emergency Management Act, MCL 30.411, remains in effect, a disaster relief child care center operated by a school district in accordance with section 2(b) of this order, including its employees, is designated as a disaster relief force under subsection (f) of section 2 of the Emergency Management Act, 1976 PA 390, as amended ("EMA"), MCL 30.402(f), and is entitled to the immunities set forth in subsections (1) through (3) of section 11 of the EMA, MCL 30.411(1)-(3).

7. Disaster relief child care centers operated by school districts constitute a pilot program under the Public Employment Relations Act, 1947 PA 336, MCL 423.201 et seq., and they have authority to charge for reasonable and customary services.

8. School districts and nonpublic schools should first identify employees who voluntarily elect to become a disaster relief child care center participant before reassigning other employees to work in these centers, to the extent authorized under applicable contracts and laws. School districts and nonpublic schools may not require an employee to work in a disaster relief child care center if the employee: has a confirmed diagnosis of COVID-19; is displaying the symptoms of COVID-19; is 60 years or older; has an underlying condition that places the employee at an elevated risk of serious illness from COVID-19; or has been in contact with someone with a confirmed diagnosis of COVID-19 in the last 14 days.

9. A disaster relief child care center must perform a health evaluation of all individuals who enter the center each time the individual seeks to enter the center, and must deny entry to those individuals who do not meet the evaluation criteria. The evaluation criteria must include: symptoms of a respiratory infection, such as fever, cough, or shortness of breath; and contact in the last 14 days with someone with a confirmed diagnosis of COVID-19.

10. For purposes of this order:

    (a) "Disaster relief child care center" means a child center offering child care pursuant to this order. A disaster relief child care center must give priority for its services to the essential workforce, but may also provide child care services to the general public as space and governing rules and/or orders permit.

    (b) "Essential workforce" includes health care workers, home health workers, direct care workers, emergency medical service providers, first responders, law enforcement personnel, sanitation workers, child care workers (including any employees acting as child care workers in disaster relief child care centers), personnel providing correctional services, postal workers, public health employees, key government employees, court personnel, and others providing critical infrastructure to Michiganders, including any individuals performing (remotely or in person) critical infrastructure work, necessary government activities, or minimum basic operations under Executive Order 2020-42 or any order that may follow from it.

    (c) "Critical infrastructure" includes utilities, manufacturing, mass transit, and groceries or other essential supplies, goods, or equipment.

    (d) "Key government employees" includes child protective services workers, child welfare workers, foster care workers including those from contracted agencies, recipient rights workers, employees of the Executive Office of the governor, cabinet officers and their designees, Department of Health and Human Services field office staff, Unemployment Insurance Agency employees, and other employees identified by the Department of Technology, Management, and Budget.

11. Nothing in this order shall be construed to diminish or relax in any way the restrictions and requirements imposed by Executive Order 2020-115 or any order that may follow from it.

12. This order is effective immediately and continues through July 7, 2020.

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

14. Executive Order 2020-84 is rescinded.

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

Date: June 9, 2020

Time: 8:15 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE