STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

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EXECUTIVE ORDER

No. 2020-164

Requiring masks at child-care centers and camps

Here in Michigan and across the United States, multiple COVID-19 outbreaks at child-care centers and overnight camps have spurred renewed attention to the rules governing mask use. The scientific evidence is mounting that children can and do spread the virus that causes the disease. By creating new requirements for staffers and children to wear masks at child-care centers and camps, this executive order aims to prevent the further spread of COVID-19 and to align the rules on mask use in child-care centers and camps with those that already apply to preK–12 schools.

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 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 (EMA), MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended (EPGA), 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 EPA, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the EMA.

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 June 18, 2020, I issued Executive Order 2020-127, 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 had 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.

Acting under the Michigan Constitution of 1963 and Michigan law, I find it reasonable and necessary, for the reasons outlined above, to order:

1. Notwithstanding section 4 of Executive Order 2020-153, all child-care organizations (as defined by section 1(b) of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111(b)) and day, residential, travel, and troop camps for children (as defined by Rule 400.11101 of the Michigan Administrative Code) (collectively, "child-care organizations and camps") must require the wearing of face coverings that cover the nose and mouth for:

   (a) All staff and all children ages 2 and up when on a school bus or other transportation provided by the child care organization or camp;

   (b) All staff and all children ages 4 and up when in indoor hallways and common

areas. Face coverings should be encouraged for children ages 2 and up; and

(c) All staff and all children ages 12 and up when in classrooms, homes, cabins, or similar indoor settings. Face coverings should be encouraged for children ages 2 and up.

(d) All visitors to the child-care organization or camp.

2. Exceptions. Notwithstanding section 1, face coverings at child-care organizations and camps are not required:

(a) For children under the age of 2;

(b) For any child who cannot medically tolerate a face covering, has trouble breathing, or is unable to remove the face covering without assistance;

(c) While eating, sleeping, swimming, or performing high-intensity activities (not including singing or cheering);

(d) When a child or staff member is outdoors and able to consistently maintain a distance of six feet or more from individuals who are not members of their household; or

(e) For child-care centers located in a region that is in Phase 5 of the Michigan Safe Start Plan, though face coverings are highly recommended.

3. Any child or staff member who does not wear a face covering pursuant to an exception is section 2 is strongly encouraged to wear a face shield when indoors with other people from outside their household and when outdoors and unable to maintain six feet of distance from other people outside their household.

4. For purposes of providing child-care services, child-care organizations and camps may use facilities that are otherwise closed to the public under section 4 of Executive Order 2020-160.

5. The Department of Licensing and Regulatory Affairs will issue additional guidance on infection-control practices to prevent the spread of COVID-19 at child-care organizations and camps.

6. Executive Order 2020-146 is extended through August 15, 2020.

7. Except for section 6, which is effective immediately, this order is effective at 12:01 a.m. on August 10, 2020.

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

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

Date: August 6, 2020

Time: 1:54pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE