Executive Directive 2020 - 08

Executive Directive

No. 2020-8

To: State Department Directors and Autonomous Agency Heads

From: Governor Gretchen Whitmer

Date: August 4, 2020

Re: COVID-19 and enforcement by state departments and agencies

---

Where Michigan was once among the states most heavily hit by COVID-19, our per-capita case rate is now below the national average. Our progress in suppressing the disease, however, appears to have slowed. Cases have risen over the past month—from a rolling seven-day average of about 15 cases per million on in mid-June, the low point since the peak last April, to about 50 cases per million in late July.

Enforcement of my executive orders is a key part of ensuring that the resumption of activities does not contribute to the spread of this virus. Without effective enforcement, we will move backwards. Individuals, businesses, and the economy will all suffer. At work and at play—on the job and in social gatherings—compliance is critical to moving forward.

Consider, for example, businesses. Many have already implemented robust infection-control practices—with some even going above and beyond what is required to protect their workers, their patrons, and their communities. But, unfortunately, some have not. A single failure could set us back weeks: an outbreak at an East Lansing bar, one of the largest so far in the United States, resulted in 187 known infections. And these infections then metastasize to other communities, endangering our seniors, our vulnerable populations, and our recovery.

State departments and agencies must ensure that enforcement of COVID-19-related laws receives the priority this pandemic demands. I am sincerely grateful to every Michigander who has sacrificed to fight this virus. We will get through this together, with everyone doing their part.

Acting under sections 1 and 8 of article 5 of the Michigan Constitution of 1963, I direct the following:

1. State department directors and autonomous agency heads must review allocation of their resources to ensure that enforcement of COVID-19-related laws is a priority. Directors and agency heads should give elevated importance to enforcement of COVID-19-related laws in categories of establishments where transmission is well-documented, including but not limited to nursing homes, meat processing plants, and agricultural labor camps.

2. Many departments and agencies administer licensing programs for individuals and businesses that offer services to the public. When interpreting a licensee's obligation to demonstrate or maintain suitability for licensing, state department directors and autonomous agency heads must consider violations of law, including violations of relevant COVID-19 executive orders and epidemic orders issued pursuant to section 2253 of the Public Health Code, as amended, MCL 333.2253 ("epidemic orders"), as evidence of a lack of suitability for licensing, to the extent permitted by law.

3. State department directors and autonomous agency heads must consider non-compliance with a COVID-19 executive order or epidemic order to be presumptive evidence of a "public health hazard" or "imminent and substantial hazard to the public health." Nothing in this section relieves an agency of an obligation to compile an evidentiary record in support of a factual finding or legal determination, or deprives an agency of the discretion to prioritize enforcement of more serious cases.

a. When a state department director or autonomous agency head becomes aware of a violation of law that affects public health, safety, or welfare, including a violation of a COVID-19 executive order or epidemic order, the director or autonomous agency head must consider whether the public health, safety, or welfare requires summary suspension of a license under section 92 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.292(2).

b. When the director of the Department of Agriculture and Rural Development becomes aware of a violation of law at a food establishment inspected and licensed by the department that would create an imminent and substantial hazard to the public health, including a violation of a COVID-19 executive order or epidemic order, the director must consider whether to order immediate cessation of operation under section 2113 of the Food Law, 2000 PA 92, as amended, MCL 289.2113(1).

4. The Department of State Police must enforce violations of COVID-19 executive orders and epidemic orders in the same manner as it would enforce any other violation of law, using enforcement discretion as appropriate.

5. If a state department or autonomous agency becomes aware of a credible complaint of a violation of law by a licensee, including a possible violation of a COVID-19 executive order or epidemic order, the director or agency head must refer the complaint to all relevant licensing authorities, insofar as otherwise consistent with law. State departments and autonomous agencies should coordinate enforcement efforts to ensure the most efficient and effective deployment of enforcement resources.

This directive is effective immediately.

Thank you for your cooperation in implementing this directive.

COPYRIGHT 2021 STATE OF MICHIGAN