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STATE OF MICHIGAN  
**Journal of the Senate**  
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**REGULAR SESSION OF 2020**

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Senate Chamber, Lansing, Wednesday, August 12, 2020.

10:00 a.m.

Pursuant to rule 1.101, in the absence of the Presiding Officers, the Senate was called to order by the Secretary of the Senate.

**Motions and Communications**

The following communication was received and read:  
Office of the Senate Majority Leader

August 10, 2020

Pursuant to the authority granted in Joint Rule 15 of the Senate and House of Representatives you are hereby notified that we have unanimously determined there is a need to convene the Senate on Saturday, August 15, 2020 at 10:00 a.m. and the House of Representatives on Monday, August 17, 2020 at 10:00 a.m. We respectfully request that you prepare all necessary notices and communications for these sessions of the Senate and House of Representatives.

Sincerely,

Mike Shirkey  
Senate Majority Leader

Lee Chatfield  
Speaker of the House

The communication was referred to the Secretary for record.

**Messages from the Governor**

The following message from the Governor was received on August 6, 2020, and read:

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.

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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: 1:54 p.m.

[SEAL]

Gretchen Whitmer  
Governor

By the Governor:  
Jocelyn Benson  
Secretary of State

The executive order was referred to the Committee on Government Operations.

The following message from the Governor was received on August 7, 2020, and read:

EXECUTIVE ORDER  
No. 2020-165

**Declaration of state of emergency and state of disaster  
related to the COVID-19 pandemic**

**Rescission of Executive Order 2020-151**

Where Michigan was once among the states most heavily hit by COVID-19, our per-capita rate of new daily cases is now roughly one-third of the national average. Our progress in suppressing the disease, however, appears to have stalled and even begun to erode. Cases have risen—from a rolling seven-day average of about 15 cases per million per day in mid-June to about 50 cases per million per day in late July. Moreover, over the next month, many Michigan students will return to in-person instruction, increasing the risk of outbreaks. The health, economic, and social harms of the COVID-19 pandemic thus remain widespread and severe, and they continue to constitute a statewide emergency and disaster.

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On March 10, 2020, I issued Executive Order 2020-4, which declared a state of emergency in Michigan to address the COVID-19 pandemic. This disease, caused by a novel coronavirus not previously identified in humans, can easily spread from person to person and can result in serious illness or death. There is currently no approved vaccine or antiviral treatment.

Scarcely three weeks later, the virus had spread across Michigan. As of April 1, 2020, the state had 9,334 confirmed cases of COVID-19 and 337 deaths from the disease, with many thousands more infected but not yet tested. Exactly one month later, this number had ballooned to 42,356 confirmed cases and 3,866 deaths from the disease—a tenfold increase in deaths. The virus’s rapid spread threatened to overwhelm the state’s health care system: hospitals in multiple counties were reportedly at or near capacity; medical personnel, supplies, and resources necessary to treat COVID-19 patients were in high demand but short supply; dormitories and a convention center were being converted to temporary field hospitals.

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. Like Executive Order 2020-4, this declaration was based on multiple independent authorities: 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.* On April 7, 2020, the Michigan legislature adopted a concurrent resolution to extend the states of emergency and disaster declared under the Emergency Management Act until April 30, 2020.

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 have been appealed; the Court of Appeals has conducted oral argument and an opinion will be issued by August 21, 2020.

Since I first declared an emergency in response to this pandemic, my administration has taken aggressive measures to fight the spread of COVID-19, prevent the rapid depletion of this state’s critical health care resources, and avoid needless deaths. The best way to slow the spread of the virus is for people to stay home and keep their distance from others. To that end, and in keeping with the recommendations of public health experts, I issued orders restricting access to places of public accommodation and school buildings, limiting gatherings and travel, and requiring workers who are not necessary to sustain or protect life to remain at home. I also issued orders enhancing the operational capacity and efficiency of health care facilities and operations, allowing health care professionals to practice to the full extent of their training regardless of licensure, and facilitating the delivery of goods, supplies, equipment, and personnel that are needed to combat this pandemic. And I took steps to build the public health infrastructure in this state that is necessary to contain the spread of infection.

These statewide measures were effective. For example, a report released by the Imperial College COVID-19 Response Team showed that my actions significantly lowered the number of cases and deaths that would have occurred had the state done nothing. And while the virus remains aggressive and persistent—on August 6, Michigan reported a total of 84,707 confirmed cases and 6,221 deaths—the strain on our health care system has relented, even as our testing capacity has increased.

With the steep reduction in case counts, I moved progressively to relax restrictions on business activities and daily life. On June 1, I announced that most of the state would move to Phase 4 of my Safe Start plan, thereby allowing retailers and restaurants to resume operations. Hair salons and other personal care services followed two weeks later. And on June 10, I moved the Upper Peninsula and the region surrounding Traverse City to Phase 5, allowing for the reopening of movie theaters, gyms, bowling alleys, and other businesses.

Since then, however, our progress in suppressing the pandemic has stalled and begun to erode. Every region in Michigan has seen an uptick in new cases, and daily case counts in late July exceeded 50 cases per million statewide. Our statewide positivity rate has also increased, from a low of 2% in mid-June to 3.5% in late July. The increase in cases reflects a national trend: COVID-19 cases are growing or holding steady in 40 states and deaths from COVID-19 are increasing in most of those states as well.

Michigan now faces an acute risk of a second wave, one that not only threatens lives but may also jeopardize the reopening of schools in the fall. In response, I have paused the reopening of our economy. Gyms and performance venues remain closed across most of the state, and large gatherings remain curtailed. At the same time, consistent with the accumulating evidence that COVID-19 often spreads via aerosolized droplets, I have adopted additional measures—including the closure of certain bars, and a requirement that stores refuse entry and service to those without face coverings—to reduce the risk of spread in indoor spaces. Life will not be back to normal for some time to come.

In the meantime, the economic toll continues to mount. Between March 15 and May 30, Michigan received 2.2 million initial unemployment claims—the fifth-highest nationally, amounting to more than a third of the Michigan workforce. During this crisis, Michigan has often processed more unemployment claims in a single day than in the most painful week of the Great Recession, and the state already saw its highest unemployment

rate since the Great Depression (22.7% in April). The Michigan Department of Treasury predicts that this year the state will lose between \$1 and \$3 billion in revenue. Even as Michigan experiences unemployment rates not seen in decades, federal unemployment assistance has expired, with Congress deadlocked over a renewal. Until it is renewed, the additional \$600 federal pandemic benefit will no longer flow to Michigan families. Without that money, many families in Michigan will struggle to pay their bills or even put food on the table.

In addition to these challenges, many Michigan students will return to in-person instruction over the next month, increasing the risk of outbreaks. States that have reopened schools have already begun to see new cases—a second-grader in Cherokee County, Georgia, a middle schooler in Greenfield, Indiana, and a high schooler in Corinth, Mississippi, have already tested positive for COVID-19 after attending school in person, triggering quarantines in those districts.

The health, economic, and social harms of the COVID-19 pandemic thus remain widespread and severe, and they continue to constitute a statewide emergency and disaster. Though local health departments have some limited capacity to respond to cases as they arise within their jurisdictions, state emergency operations are necessary to bring this pandemic under control in Michigan and to build and maintain infrastructure to stop the spread of COVID-19, trace infections, and to quickly direct additional resources to hot-spots as they emerge. State assistance to bolster health care capacity and flexibility also has been, and will continue to be, critical to saving lives, protecting public health and safety, and averting catastrophe. Moreover, state disaster and emergency recovery efforts remain necessary not only to support Michiganders in need due to the economic effects of this pandemic, but also to ensure that the prospect of lost income does not impel workers who may be infected to report to work.

Statewide coordination of these efforts is crucial to creating a stable path to recovery. Until that recovery is underway, the economic and fiscal harms from this pandemic have been contained, and the threats posed by COVID-19 to life and the public health, safety, and welfare of this state have been neutralized, statewide disaster and emergency conditions will exist.

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

1. The COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan.
2. This order constitutes a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. Subject to the ongoing litigation, and the possibility that current rulings may be overturned or otherwise altered on appeal, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act of 1976 when emergency and disaster conditions exist yet the legislature has not granted an extension request, this order constitutes a state of emergency and state of disaster declaration under that act.
3. This order is effective immediately and continues through September 4, 2020 at 11:59 p.m. I will evaluate the continuing need for this order.
4. Executive Order 2020-151 is rescinded. All previous orders that rested on that order now rest on this order.

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

Date: August 7, 2020  
Time: 12:56 p.m.

[SEAL]

Gretchen Whitmer  
Governor

By the Governor:  
Jocelyn Benson  
Secretary of State

The executive order was referred to the Committee on Government Operations.

The following message from the Governor was received on August 7, 2020, and read:

EXECUTIVE ORDER  
No. 2020-166

**Protecting workers who stay home, stay safe  
when they or their close contacts are sick**

**Rescission of Executive Order 2020-36**

The lapsing of the federal supplement to unemployment benefits at the end of July means that more Michiganders will feel pressure to go to work—perhaps even when they are sick with COVID-19. Doing so,

however, risks spreading infection at the workplace, which will frustrate efforts to reopen the economy and get our kids back to school. Individuals who have COVID-19, or who may have COVID-19, must be encouraged to isolate themselves from others.

I am therefore reissuing a prior executive order prohibiting employers from discharging, disciplining, or retaliating against employees who make the responsible choice to stay home when they or their close contacts are sick. The order has been revised to reflect updated guidance from the Centers on Disease Control on the proper period of self-quarantine after a diagnosis of COVID-19 or the onset of symptoms associated with COVID-19, as well as to update the definition of the disease's primary symptoms.

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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 August 7, 2020, I issued Executive Order 2020-165, 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 order the following:

1. It is the public policy of this state that an employer shall not discharge, discipline, or otherwise retaliate against an employee for staying home when he or she is at particular risk of infecting others with COVID-19. To effectuate that policy:

(a) Employers are prohibited from discharging, disciplining, or otherwise retaliating against an employee described in sections 2 or 3 of this order for staying home from work for the periods described in those sections.

(b) Employers must treat such an employee as if he or she were taking medical leave under the Paid Medical Leave Act, 2018 PA 338, as amended, MCL 408.961 *et seq.*

(1) To the extent that the employee has no paid leave, the leave may be unpaid. Employers are permitted, but not required, to debit any hours that an employee described in sections 2 or 3 of this order stays home from work from the employee's accrued leave.

(2) The length of such leave is not limited by the amount of leave that an employee has accrued under MCL 408.963 and must extend, whether paid or unpaid, as long as the employee remains away from work within the time periods described in sections 2 or 3 of this order.

(c) Nothing in this section shall be taken to prevent an employer from discharging or disciplining an employee:

(1) Who is allowed to return to work under sections 2 or 3 of this order but declines to do so;

(2) With the employee's consent (e.g., if the employee asks to be discharged); or

(3) For any other reason that is not unlawful.

(d) The director of the Department of Labor and Economic Opportunity shall have authority to enforce this order in the same manner and to the same extent as the director enforces the Paid Medical Leave Act under section 7 of that act, MCL 408.967. In addition, the director shall refer all credible complaints of violations to the relevant licensing authority.

2. Subject to the exceptions in section 5 of this order, it is the public policy of this state that any and all individuals who test positive for COVID-19 or who display one or more of the principal symptoms of COVID-19 should (apart from seeking medical care) remain in their home or place of residence until:

(a) 24 hours have passed since the resolution of fever without the use of fever-reducing medications;

(b) 10 days have passed since their symptoms first appeared or since they were swabbed for the test that yielded the positive result; and

(c) other symptoms have improved.

3. Subject to the exceptions in section 5 of this order, it is the public policy of this state that any and all people who have had close contact with an individual who tests positive for COVID-19 or with an individual who displays one or more of the principal symptoms of COVID-19 should remain in their home or place of residence (apart from seeking medical care) until either:

(a) 14 days have passed since the last close contact with the sick or symptomatic individual; or

(b) The individual displaying COVID-19 symptoms receives a negative COVID-19 test.

4. Section 3 does not apply to the following classes of workers, provided that their employers' rules governing occupational health allow them to go to work:

(a) Health care professionals.

(b) Workers at a health care facility, as defined in section 7(d) of this order.

(c) First responders (e.g., police officers, fire fighters, paramedics, emergency medical technicians).

(d) Child protective service employees.

(e) Workers at child caring institutions, as defined in section 1 of Public Act 116 of 1973, MCL 722.111.

(f) Workers at adult foster care facilities, as defined in the Adult Foster Care Facility Licensing Act, MCL 400.703(4).

(g) Workers at correctional facilities.

5. An individual described in sections 2 or 3 of this order who voluntarily returns to work (i.e. without threat of discharge, discipline, or retaliation from their employer) prior to the periods specified in sections 2 or 3, respectively, shall not be entitled to the protections against discharge, discipline, or retaliation provided under section 1 of this order.

6. It is the public policy of this state that individuals with a suspected or confirmed COVID-19 infection or who have had close contact with such an individual (i.e. individuals described in sections 2 and 3 of this order) should leave the home or place of residence only:

(a) To the extent absolutely necessary to obtain food, medicine, medical care, or supplies that are needed to sustain or protect life, where such food, medicine, medical care, or supplies cannot be obtained via delivery. All food, medicine, and supplies should be picked up at the curbside to the fullest extent possible.

(b) To engage in outdoor activity, including walking, hiking, running, cycling, or any other recreational activity consistent with remaining at least six feet from people from outside their household.

7. For purposes of this order:

(a) "The principal symptoms of COVID-19" are fever, sore throat, a new uncontrolled cough that causes difficulty breathing, diarrhea, vomiting, abdominal pain, new onset of a severe headache, and new loss of taste or smell.

(b) "Employer" means the same as it does in section 2(f) of the Paid Medical Leave Act, MCL 408.962(f), except that it shall also include employers with fewer than 50 employees.

(c) "Close contact" means being within six feet of an individual for fifteen minutes.

(d) “Health care facility” means the following facilities, including those which may operate under shared or joint ownership:

(1) The entities listed in section 20106(1) of the Public Health Code, 1978 PA 368, as amended MCL 333.20106(1).

(2) State-owned hospitals and surgical centers.

(3) State-operated outpatient facilities.

(4) State-operated veterans facilities.

(5) Entities used as surge capacity by any of the entities listed in subdivisions (1)-(4) of this subsection.

8. Nothing in this order shall be taken to create a private right of action against an employer for failing to comply with section 1 of this order or against an individual for acting contrary to the public policies of sections 2, 3, 5, or 6 of this order.

9. Executive Order 2020-36 is rescinded.

10. This order is effective immediately.

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

Date: August 7, 2020

Time: 1:01 p.m.

[SEAL]

Gretchen Whitmer  
Governor

By the Governor:  
Jocelyn Benson  
Secretary of State

The executive order was referred to the Committee on Government Operations.

The following message from the Governor was received on August 7, 2020, and read:

EXECUTIVE ORDER  
No. 2020-167

**Food Security Council**

**Department of Health and Human Services**

Food insecurity is a pressing and persistent problem in Michigan. Despite the tireless work of numerous individuals and groups, many Michigan residents continue to live without reliable, daily access to an adequate amount of affordable, nutritious food.

The effects of food insecurity are significant and far-reaching. The problem impacts the educational outcomes of our children, the costs of our health care, the development and stability of our workforce, and the rates of crime in our communities.

COVID-19 has only exacerbated this problem. The pandemic has deeply disrupted the well-being of this state’s residents and the stability of its economy. As a result, more Michiganders have found themselves dependent on assistance programs and emergency food resources in their communities to meet their daily needs.

The health of Michigan’s economy, residents, and communities would benefit from a body focused on formulating a cohesive, collaborative, and actionable plan for achieving food security for all of Michigan’s residents, both during this pandemic and thereafter.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

Section 8 of article 5 of the Michigan Constitution of 1963 obligates the governor to take care that the laws be faithfully executed.

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

**1. Creating the Food Security Council**

(a) The Food Security Council (“Council”) is created as an advisory body within the Department of Health and Human Services (“Department”).

(b) The Council must consist of the following voting members:

(1) The director of the Department, or the director’s designee from within the Department.

(2) The director of the Department of Agriculture and Rural Development, or the director’s designee from within that department.



(3) The director of the Department of Labor and Economic Opportunity, or the director's designee from within that department.

(4) The superintendent of public instruction, or the superintendent's designee from within the Department of Education.

(5) 16 individuals appointed by the governor representing various sectors affected by, and/or working towards, a solution for food insecurity in Michigan, such as the health care, agriculture, education, business, and nonprofit sectors.

(c) The Council may also consist of the following non-voting members:

(1) One member of the Michigan House of Representatives, appointed by the governor, from a list of three candidates submitted by the house speaker.

(2) One member of the Michigan House of Representatives, appointed by the governor, from a list of three candidates submitted by the house minority leader.

(3) One member of the Michigan Senate, appointed by the governor, from a list of three candidates submitted by the senate majority leader.

(4) One member of the Michigan Senate, appointed by the governor, from a list of three candidates submitted by the senate minority leader.

(d) A vacancy on the Council must be filled in the same manner as the original appointment as described in section 1 of this order.

## **2. Charge to the Council**

(a) The Council must act in an advisory capacity to the governor and must perform the following acts:

(1) Identify and analyze the nature, scope, and causes of food insecurity in Michigan.

(2) Identify and assess evidence-based policies to decrease food insecurity, both during and after the COVID-19 pandemic. This should include consideration of innovative efforts and proposals, as well as solutions adopted by other states to address food insecurity and their potential applicability to the problem as it exists in Michigan.

(3) Analyze the return on investment to policies that decrease food insecurity, including, where appropriate, cost-benefit analysis of these policies' impacts on economic growth, educational outcomes, health outcomes, and other areas.

(4) Review and make recommendations regarding how the resources and efforts currently devoted to address food insecurity can be best coordinated and implemented, and how those resources and efforts can be most effectively supplemented.

(5) Review and make recommendations regarding legislation potentially relevant to the causes of, and/or potential solutions for, food insecurity in Michigan.

(6) Provide other information, advice, or take other actions as requested by the governor.

(b) The Council must prepare a final report and submit it to the governor. This report must include, but is not limited to, the findings and recommendations described in section 2(a) of this order.

(c) The Council must complete its final report in two stages:

(1) First, the Council must prepare and submit an initial report with short-term findings and recommendations related to food insecurity and COVID-19. This initial report must be submitted to the governor within 3 months of the issuance of this order; and

(2) Second, the Council must prepare and submit the remainder of its report within 18 months of the issuance of this order.

## **3. Operations of the Council**

(a) The Department must assist the Council in the performance of its duties and provide personnel to staff the Council. The budgeting, procurement, and related management functions of the Council will be performed under the direction and supervision of the director of the Department.

(b) The Council must adopt procedures, consistent with this order and applicable law, governing its organization and operations.

(c) The Council must comply with the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 through 15.246.

(d) The governor must designate the chairperson of the Council.

(e) The Council may select from among its members a vice chairperson.

(f) The Council must meet at the call of its chairperson and as otherwise provided in the procedures adopted by the Council.

(g) A majority of the voting members of the Council serving constitutes a quorum for the transaction of the business of the Council. The Council must act by a majority vote of its voting members serving.

(h) The Council may establish advisory workgroups composed of individuals or entities participating in Council activities, or other members of the public as deemed necessary by the Council, to assist in performing its duties and responsibilities. The Council may adopt, reject, or modify any recommendations proposed by an advisory workgroup.

(i) The Council may, as appropriate, make inquiries, studies, and investigations, hold hearings, and receive comments from the public. The Council may also consult with outside experts in order to perform its duties, including experts in the private sector, organized labor, government agencies, and at institutions of higher education.

(j) The Council may hire or retain contractors, sub-contractors, advisors, consultants, and agents, and may make and enter into contracts necessary or incidental to the exercise of the powers of the Council and the performance of its duties, as the director of the Department deems advisable and necessary, consistent with this order and applicable law, rules and procedures, subject to available funding.

(k) The Council may accept donations of labor, services, or other things of value from any public, or private agency, or person. Any donations must be received and used in accordance with law.

(l) Members of the Council must not receive additional compensation for their participation. Members of the Council may receive reimbursement for necessary travel and expenses consistent with applicable law, rules, and procedures, subject to available funding.

(m) Members of the Council must refer all legal, legislative, and media contacts to the Department.

(n) The Council must dissolve 90 days after issuance of its final report.

#### 4. Implementation

(a) All departments, agencies, committees, commissioners, or officers of this state must give to the Council, or to any member or representative of the Council, any necessary assistance required by the Council, or any member or representative of the Council, in the performance of the duties of the Council so far as is compatible with their duties and consistent with this order and applicable law. Free access also must be given for any books, records, or documents in their custody relating to matters within the scope of inquiry, study, or review of the Council, consistent with applicable law.

(b) This order is not intended to abate a proceeding commenced by, against, or before an officer or entity affected by this order. A proceeding may be maintained by, against, or before the successor of any officer or entity affected by this order.

(c) Nothing in this order should be construed to change the organization of the executive branch of state government or the assignment of functions among its units, in a manner requiring the force of law.

(d) If any portion of this order is found to be unenforceable, the rest of the order remains in effect.

(e) This order is effective upon filing.

Given under my hand and the great seal of the State of Michigan.

Date: August 7, 2020

Time: 2:48 p.m.

[SEAL]

Gretchen Whitmer  
Governor

By the Governor:  
Jocelyn Benson  
Secretary of State

The executive order was referred to the Committee on Government Operations.

The following message from the Governor was received on August 11, 2020, and read:

EXECUTIVE ORDER  
No. 2020-168

**Temporary safety measures for food-selling establishments and pharmacies and temporary relief from requirements applicable to the renewal of licenses for the food-service industry**

**Rescission of Executive Order 2020-149**

Beginning in May 2020, I put in place special protocols to minimize the risk of COVID-19 transmission in food-selling establishments and pharmacies. Because buying food and medicine remains an unavoidable source of infection risk for many Michiganders, and the COVID-19 pandemic remains a serious and deadly threat, it is reasonable and necessary to again extend these policies.

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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 (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 August 7, 2020, I issued Executive Order 2020-165, 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 order the following:

1. Grocery stores and pharmacies must create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant people, and those with chronic conditions, including heart disease, diabetes, and lung disease.

2. Food-selling establishments and pharmacies must deploy strategies to reduce COVID-19 exposure for their customers and employees consistent with the strategies described in Executive Order 2020-153 and 2020-161 or any order that follows from either order, as well as the following:

- (a) Provide access to handwashing facilities, including those available in public restrooms;

- (b) Allow employees sufficient break time to wash hands as needed;

- (c) Use best efforts to ensure checkout employees disinfect their hands between orders to prevent cross-contamination;

- (d) Use best efforts to provide employees and customers access to an alcohol-based hand sanitizer that contains at least 60% alcohol, as recommended by the Centers for Disease Control and Prevention (CDC);

(e) Use best efforts to provide disinfecting wipes at cash registers and entrance points for customers to disinfect carts and baskets, as well as at other appropriate locations;

(f) Ensure that both employees and customers remain at least six feet apart to the maximum extent possible, including during employee breaks, for example by reviewing floor plans, creating temporary barriers, designating aisles as one-way only, and demarcating queueing distances;

(g) Close self-serve prepared food stations such as salad bars;

(h) Eliminate free samples and tasting stations;

(i) Adopt procedures to meet the environmental cleaning guidelines set by the CDC, including by cleaning and disinfecting frequent touchpoints throughout the day such as point of sale terminals at registers, shopping carts, and shopping baskets;

(j) Prohibit employees who are sick from reporting to work and send employees home if they display symptoms of COVID-19. Employees who test positive for COVID-19 or who display one or more of the principal symptoms of COVID-19 should follow the procedures of Executive Order 2020-166 or any order that follows from it;

(k) Accommodate employees who fall within a vulnerable population by providing lower-exposure work assignments or giving them the option to take an unpaid leave of absence with a return date of September 7, 2020 or later. Nothing in this executive order abrogates any right to disability benefits. Employees who take an unpaid leave of absence as described in this subsection are encouraged to apply for unemployment benefits;

(l) Close to the public for sufficient time each night to allow stores to be properly sanitized;

(m) Encourage cash transactions to be processed at self-checkout kiosks when possible; and

(n) Adhere to all applicable safeguards, including but not limited to conducting a daily self-screening protocol for all employees and contractors, that are required under Executive Order 2020-161 or any order that follows from it.

3. Vendors moving between food-selling establishments must frequently clean and disinfect frequent touch points.

4. If an employee at a food-selling establishment tests positive for COVID-19, the establishment must notify food vendors and other employees of the positive test result as soon as possible and in no case later than 12 hours after receiving the test result, without revealing the personal health-related information of any employee.

5. Strict compliance with sections 3119, 4109, 4113, and 4115 of the Food Law, 92 PA 2000, as amended, MCL 289.3119, MCL 289.4109, MCL 289.4113, and MCL 289.4115, is temporarily suspended to the extent necessary to extend the deadline for local health departments to submit fees under section 3119, and to extend the license and registration expiration dates under sections 4109 and 4115, until 60 days after the end of the states of emergency and disaster declared in Executive Order 2020-165 or the end of any subsequently declared states of disaster or emergency arising out of the COVID-19 pandemic, whichever comes later. Furthermore, late fees shall not be assessed under sections 4113 or 4115 during the 2020–2021 license year.

6. Strict compliance with subsection 6137 of the Food Law, MCL 289.6137, is suspended to the extent necessary to make a license holder eligible for a special transitory temporary food unit for the 2020–2021 licensing year, even if the license holder received only 1 evaluation during the 2019–2020 licensing year.

7. For the purposes of this order, “food-selling establishments” means grocery stores, convenience stores, restaurants that sell groceries or food available for takeout, and any other business that sells food.

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

9. This order is effective immediately and continues through September 7, 2020.

10. Executive Order 2020-149 is rescinded.

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

Date: August 10, 2020

Time: 6:00 p.m.

[SEAL]

Gretchen Whitmer  
Governor

By the Governor:  
Jocelyn Benson  
Secretary of State

The executive order was referred to the Committee on Government Operations.

The following message from the Governor was received on August 11, 2020, and read:

EXECUTIVE ORDER  
No. 2020-169

**Enhanced protections for residents and staff of long-term care facilities  
during the COVID-19 pandemic**

**Rescission of Executive Order 2020-148**

From day one, I have taken action to protect seniors from the deadly COVID-19 pandemic. Because of the inordinate risk of COVID-19 to elderly Michiganders living in congregate settings, I have issued executive orders implementing special protections for residents and employees of long-term care facilities. To ensure our nursing homes are as safe as possible, I pushed our inspectors to complete 100% of infection control surveys more than two months before the federal deadline, and they delivered. And I have worked tirelessly to procure tests and PPE to keep seniors safe, and to facilitate testing for all nursing home residents and staff, with little to no assistance from federal authorities. To protect against a possible second wave, I created the nursing home preparedness task force, which is set to produce its report August 31. Finally, my stay-home and safe-start orders have dramatically cut the infection rate and limited community spread, the single-greatest threat to the residents of long-term care facilities.

Because COVID-19 continues to threaten the health and safety of elderly Michiganders living in long-term care facilities, it is reasonable and necessary to continue the enhanced protections for residents and staff of long-term care facilities put in place back in April 2020. This order rescinds my prior executive order on this topic, and extends those protections for additional four weeks.

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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 (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 August 7, 2020, I issued Executive Order 2020-165, 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 order the following:

#### **I. Protections for residents of long-term care facilities**

1. Notwithstanding any statute, rule, regulation, or policy to the contrary, a long-term care facility must not effectuate an eviction or involuntary discharge against a resident for nonpayment, nor deny a resident access to the facility, except as otherwise provided in this order.

2. A long-term care facility must not prohibit admission or readmission of a resident based on COVID-19 testing requirements or results in a manner that is inconsistent with this order or relevant guidance issued by the Department of Health and Human Services (“DHHS”).

3. The following apply to a resident that voluntarily obtained housing outside of a long-term care facility such as by moving in with a family member (but not to a resident who was hospitalized) during any state of emergency or state of disaster arising out of the COVID-19 pandemic:

(a) The resident does not forfeit any right to return that would have been available to the resident under state or federal law had they been hospitalized or placed on therapeutic leave. Nothing in this section affects the rights of a resident who was hospitalized or placed on therapeutic leave.

(b) Except as provided in subsection (c), as soon as capacity allows, the long-term care facility of origin must accept the return of the resident, provided it can meet the medical needs of the resident, and there are no statutory grounds to refuse the return.

(c) Prior to accepting the return of such a resident, the long-term care facility must undertake screening precautions that are consistent with relevant DHHS guidance when receiving the returning resident. A facility must not accept the return of a COVID-19-positive resident if the facility does not have a dedicated unit or regional hub meeting the requirements of this order.

4. Nothing in this order abrogates the obligation to pay or right to receive payment due under an admission contract between a resident and a long-term care facility.

5. All long-term care facilities must use best efforts to facilitate the use of telemedicine in the care provided to their residents, including, but not limited to, for regular doctors’ visits, telepsychology, counseling, social work and other behavioral health visits, and physical and occupational therapy.

#### **II. Protections for employees and residents of long-term care facilities**

1. It is the public policy of this state that employees of long-term care facilities or regional hubs who test positive for COVID-19 or who display one or more of the principal symptoms of COVID-19 should remain in their homes or places of residence, as provided in section 2 of Executive Order 2020-166 or any order that may follow from it, and that their employers shall not discharge, discipline, or otherwise retaliate against them for doing so, as provided in section 1 of Executive Order 2020-166 or any order that may follow from it.

2. Long-term care facilities must:

(a) Cancel all communal dining and all internal and external group activities;

(b) Take all necessary precautions to ensure the adequate disinfecting and cleaning of facilities, in accordance with relevant guidance from the Centers for Disease Control and Prevention (“CDC”);

(c) Use best efforts to provide appropriate personal protective equipment (“appropriate PPE”) and hand sanitizer to all employees that interact with residents;

(d) As soon as reasonably possible, but no later than 12 hours after identification, inform employees of the presence of a COVID-19-affected resident;

(e) Notify employees of any changes in CDC recommendations related to COVID-19;

(f) Keep accurate and current data regarding the quantity of each type of appropriate PPE available onsite, and report such data to EMResource upon DHHS’s request or in a manner consistent with DHHS guidance; and

(g) Report to DHHS all presumed positive COVID-19 cases in the facility together with any additional data required under DHHS guidance.

#### **III. Procedures related to transfers and discharges of COVID-19-affected residents**

1. A long-term care facility must report the presence of a COVID-19-affected resident to their local health department within 24 hours of identification.

2. Except as otherwise provided by an advance directive, a long-term care facility must transfer a COVID-19-affected resident who is medically unstable to a hospital for evaluation.

3. A nursing home must make all reasonable efforts to create a unit dedicated to the care and isolation of COVID-19-affected residents (“dedicated unit”).

(a) A nursing home with a dedicated unit must provide appropriate PPE to direct-care employees who staff the dedicated unit.

(b) A nursing home provider that operates multiple facilities may create a dedicated unit by designating a facility for such a purpose.

(c) A nursing home must not create or maintain a dedicated unit unless it can implement effective and reliable infection control procedures.

4. A long-term care facility must adhere to the following protocol with respect to a COVID-19-affected resident who is medically stable:

(a) If the long-term care facility has a dedicated unit, the facility must transfer the COVID-19-affected resident to its dedicated unit.

(b) If the long-term care facility does not have a dedicated unit, it must attempt to transfer the COVID-19-affected resident to a regional hub, an alternate care facility with physical and operational capacity to care for the resident, or an available swing bed at a hospital.

(c) If a transfer under subsection (b) of this section is not possible, the long-term care facility must attempt to send the resident to a hospital within the state that has available bed capacity.

5. Once a long-term care facility resident who has been hospitalized due to onset of one or more of the principal symptoms of COVID-19 becomes medically stable, the hospital must conduct testing consistent with best practices identified by the CDC prior to discharge. Discharge may be made to any of the following: a regional hub, the facility where the resident resided prior to hospitalization, an alternate care facility with physical and operational capacity to care for the resident, or an available swing bed.

6. Discharge destinations should be determined consistent with CDC and DHHS guidelines. Decisionmakers should consider patient safety, the safety of the residents of any destination facility, the wishes of the patient and patient’s family, and any guidance or recommendations from the local health department. However, a resident may only be discharged to a facility capable of safely isolating the resident, consistent with any applicable CDC and DHHS guidelines.

7. Until an acceptable discharge destination is identified, the individual must remain in the care of the hospital where they reside.

8. For any transfer or discharge of a resident, the transferring or discharging entity must ensure that the resident’s advance directive accompanies the resident and must disclose the existence of any advance directive to medical control at the time medical control assistance is requested.

9. A long-term care facility that transfers or discharges a resident in accordance with this order must notify the resident and the resident’s representative (if reachable) of the transfer or discharge within 24 hours.

10. The department of licensing and regulatory affairs is authorized to take action to assure proper level of care and services in connection with this order, consistent with section 21799b of the Public Health Code, MCL 333.21799b, and any other relevant provisions of law.

11. A transfer or discharge of a long-term care facility resident that is made in accordance with this order constitutes a transfer or discharge mandated by the physical safety of other facility residents and employees as documented in the clinical record, for purposes of section 21773(2)(b) of the Public Health Code, 1978 PA 368, as amended, MCL 333.21773(2)(b), and constitutes a transfer or discharge that is necessary to prevent the health and safety of individuals in the facility from being endangered, for purposes of 42 CFR 483.15(c)(1)(i)(C)-(D) and (c)(4)(ii)(A)-(B).

12. To the extent necessary to effectuate this order, strict compliance with any statute, rule, regulation, or policy pertaining to bed hold requirements or procedures, or to pre-transfer or pre-discharge requirements or procedures, is temporarily suspended. This includes, but is not limited to, strict compliance with the requirements and procedures under sections 20201(3)(e), 21776, 21777(1), and 21777(2) of the Public Health Code, MCL 333.20201(3)(e), MCL 333.21773(2), MCL 333.21776, MCL 333.21777(1), and MCL 333.21777(2), as well as Rules 325.1922(13)-(16), 400.1407(12), 400.2403(9), and 400.15302 of the Michigan Administrative Code.

#### **IV. Definitions and general provisions**

1. For purposes of this order:

(a) “Adult foster care facility” has the same meaning as provided by section 3(4) of the Adult Foster Care Facility Licensing Act, 1979 PA 218, as amended, MCL 400.703(4).

(b) “Alternate care facility” means any facility activated by the state to provide relief for hospitals that surge past their capacity,

(c) “Appropriate PPE” means the PPE that DHHS recommends in relevant guidance.

(d) “Assisted living facility” means an unlicensed establishment that offers community-based residential care for at least three unrelated adults who are either over the age of 65 or need assistance with activities of daily living (ADLs), including personal, supportive, and intermittent health-related services available 24-hours a day.

(e) “COVID-19-affected resident” means a resident of a long-term care facility who is COVID-19 positive, who is a person under investigation, or who displays one or more of the principal symptoms of COVID-19.

(f) “Home for the aged” has the same meaning as provided by section 20106(3) of the Public Health Code, MCL 333.20106(3).

(g) “Long-term care facility” means a nursing home, home for the aged, adult foster care facility, or assisted living facility.

(h) “Medically unstable” means a change in mental status or a significant change or abnormality in blood pressure, heart rate, oxygenation status, or laboratory results that warrants emergent medical evaluation.

(i) “Nursing home” has the same meaning as provided by section 20109(1) of the Public Health Code, MCL 333.20109(1).

(j) “Person under investigation” means a person who is currently under investigation for having the virus that causes COVID-19.

(k) “Principal symptoms of COVID-19” are fever, atypical cough, or atypical shortness of breath.

(l) “Regional hub” means a nursing home that is designated by DHHS as a dedicated facility to temporarily and exclusively care for and isolate COVID-19-affected residents. A regional hub must accept COVID-19-affected residents in accordance with relevant DHHS orders and guidance.

(m) “Swing bed” has the meaning provided by 42 CFR 413.114(b).

2. DHHS may issue orders and directives, and take any other actions pursuant to law, to implement this executive order.

3. This order is effective immediately and continues through September 7, 2020.

4. Executive Order 2020-148 is rescinded.

5. 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 10, 2020

Time: 6:04 p.m.

[SEAL]

Gretchen Whitmer  
Governor

By the Governor:  
Jocelyn Benson  
Secretary of State

The executive order was referred to the Committee on Government Operations.

The following messages from the Governor were received and read:

August 7, 2020

I respectfully submit to the Senate the following appointments to office pursuant to Public Act 299 of 1980, MCL 339.302, 339.303 and 339.721:

**Michigan Board of Accountancy**

Mrs. Jacquelyn A. Dupler of 2768 Kittansett Drive, Okemos, Michigan 48864, county of Ingham, succeeding Barbra Homier whose term has expired, appointed to represent a general public member who is an attorney, for a term commencing August 7, 2020 and expiring June 30, 2024.

Mr. Charles L. Moore, Jr. of 2745 Hopkins Avenue, Lansing, Michigan 48933, county of Ingham, succeeding James Bayson whose term has expired, appointed to represent certified public accountants, for a term commencing August 7, 2020 and expiring June 30, 2024.

August 7, 2020

I respectfully submit to the Senate the following appointments to office pursuant to Public Act 368 of 1978, MCL 333.16121 and 333.16805:

**Michigan Board of Audiology**

Dr. Chelsea A. Conrad of 3019 Bembridge Road, Royal Oak, Michigan 48073, county of Oakland, succeeding Sharon Blackburn whose term has expired, appointed to represent audiologists, for a term commencing August 7, 2020 and expiring June 30, 2024.



Mr. Mark A. Epolito of 5806 Wood Valley Drive, Haslett, Michigan 48840, county of Ingham, reappointed to represent the general public, for a term commencing August 7, 2020 and expiring June 30, 2024.

Dr. Paul Judge of 11869 Rangeline Road, Berrien Springs, Michigan 49103, county of Berrien, succeeding Robert Borenitsch whose term has expired, appointed to represent members licensed to practice medicine or osteopathic medicine and surgery who hold a certificate of qualification from the American board of otolaryngology, for a term commencing August 7, 2020 and expiring June 30, 2024.

Mr. Daniel O. Seraphinoff of 2576 Renshaw Drive, Troy, Michigan 48085, county of Oakland, succeeding Richard Baldwin whose term has expired, appointed to represent the general public, for a term commencing August 7, 2020 and expiring June 30, 2024.

August 7, 2020

I respectfully submit to the Senate the following appointments to office pursuant to Public Act 368 of 1978, MCL 333.22211:

**Certificate of Need Commission**

Dr. Justin B. Dimick, a Democrat, of 1836 Stonebridge Drive South, Ann Arbor, Michigan 48108, county of Washtenaw, succeeding Stewart Wang whose term has expired, appointed to represent physicians licensed under part 170 or 175 representing a school of medicine or osteopathic medicine, for a term commencing August 7, 2020 and expiring April 9, 2023.

Dr. Amy Engelhardt-Kalbfleisch, an Independent, of 5095 Hilltop Estates Drive, Clarkston, Michigan 48348, county of Oakland, succeeding Tressa Gardner whose term has expired, appointed to represent physicians licensed under part 175 to engage in the practice of osteopathic medicine and surgery, for a term commencing August 7, 2020 and expiring April 9, 2023.

Mr. James B. Falahee, Jr., a Republican, of 7463 Cottage Oaks, Portage, Michigan 49024, county of Kalamazoo, reappointed to represent hospitals, for a term commencing August 7, 2020 and expiring April 9, 2022.

Dr. Ashok Kondur, a Democrat, of 6947 Kirkbridge Hill, West Bloomfield, Michigan 48322, county of Oakland, succeeding Denise Brooks-Williams whose term has expired, appointed to represent hospitals, for a term commencing August 7, 2020 and expiring April 9, 2022.

Dr. Lorissa MacAllister, a Democrat, of 7291 Kilmer Street, Grand Rapids, Michigan 49512, county of Kent, succeeding Robert L. Hughes whose term has expired, appointed to represent a company that is not self-insured for health coverage, for a term commencing August 7, 2020 and expiring January 1, 2023.

August 7, 2020

I respectfully submit to the Senate the following appointment to office pursuant to Article V, Section 28 of the Michigan Constitution of 1963 and Public Act 286 of 1964, MCL 247.803:

**Michigan State Transportation Commission**

Mr. Gregory C. Johnson of 2082 Devonshire Drive, Wixom, Michigan 48393, county of Oakland, succeeding George Heartwell who has resigned, appointed to represent Democrats, for a term commencing August 7, 2020 and expiring December 21, 2021.

Respectfully,  
Gretchen Whitmer  
Governor

The appointments were referred to the Committee on Advice and Consent.

The following message from the Governor was received and read:

August 7, 2020

I am writing to inform you of my withdrawal of the following appointment submitted to your office on July 10, 2020 pursuant to Public Act 199 of 1962, MCL 408.323 and 408.324:

**Ski Area Safety Board**

Mr. Andrew Farron of 1605 Gray Street, Marquette, Michigan 49855, county of Marquette, succeeding Nick Sirdenis whose term has expired, appointed to represent Upper Peninsula ski area managers, for a term commencing July 10, 2020 and expiring June 8, 2024.

Respectfully,  
Gretchen Whitmer  
Governor

The message was referred to the Committee on Advice and Consent.

### Announcements of Printing and Enrollment

The Secretary announced that the following bills and joint resolution were printed and filed on Thursday, August 6, and are available on the Michigan Legislature website:

<b>House Bill Nos.</b>	<b>6036</b>	<b>6037</b>	<b>6038</b>	<b>6039</b>	<b>6040</b>	<b>6041</b>	<b>6042</b>	<b>6043</b>	<b>6044</b>	<b>6045</b>	<b>6046</b>	<b>6047</b>	<b>6048</b>
	<b>6049</b>	<b>6050</b>	<b>6051</b>	<b>6052</b>	<b>6053</b>	<b>6054</b>	<b>6055</b>	<b>6056</b>	<b>6057</b>	<b>6058</b>	<b>6059</b>	<b>6060</b>	<b>6061</b>
	<b>6062</b>	<b>6063</b>	<b>6064</b>	<b>6065</b>	<b>6066</b>	<b>6067</b>	<b>6068</b>	<b>6069</b>	<b>6070</b>	<b>6071</b>	<b>6072</b>	<b>6073</b>	<b>6074</b>
	<b>6075</b>	<b>6076</b>	<b>6077</b>	<b>6078</b>	<b>6079</b>	<b>6080</b>	<b>6081</b>	<b>6082</b>	<b>6083</b>	<b>6084</b>	<b>6085</b>	<b>6086</b>	<b>6087</b>
	<b>6088</b>	<b>6089</b>	<b>6090</b>	<b>6091</b>	<b>6092</b>	<b>6093</b>	<b>6094</b>	<b>6095</b>	<b>6096</b>	<b>6097</b>	<b>6098</b>	<b>6099</b>	<b>6100</b>
	<b>6101</b>												
<b>House Joint Resolution</b>													<b>T</b>

### Scheduled Meetings

**COVID-19 Pandemic Joint Select** - Thursday, August 13, 9:00 a.m., Room 352, House Appropriations Room, 3rd Floor, Capitol Building (517) 373-5795

In the absence of all Senators, pursuant to Joint Rule 15, the Secretary of the Senate adjourned the Senate, the time being 10:03 a.m.

Pursuant to the authority granted to the committee under Joint Rule 15, the Secretary of the Senate declared the Senate adjourned until Saturday, August 15, 2020, at 10:00 a.m.

MARGARET O'BRIEN  
Secretary of the Senate