

## EMERGENCY SUSPENSION OF HEALTH CARE PRACTICE AND LICENSING REQUIREMENTS

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<http://www.house.mi.gov/hfa>

House Bills 5715, 5721, and 5724 as introduced  
Sponsor: Rep. Jason M. Sheppard

Analysis available at  
<http://www.legislature.mi.gov>

House Bills 5733 and 5737 as introduced  
Sponsor: Rep. Brandt Iden

Committee: Government Operations  
Complete to 4-29-20

### SUMMARY:

Taken together, the five bills would codify three executive orders that, on an emergency basis, suspend certain requirements in the Public Health Code, Mental Health Code, Insurance Code, and Adult Foster Care Licensing Act regarding professional scopes of practice, temporary facilities, certificates of need, dispensing of drugs, licensing, and other health care related regulatory requirements in order to help health care professionals and pharmacists respond to the ongoing COVID-19 pandemic.

On March 10, 2020, Michigan's first patient tested positive for COVID-19, at which time Governor Whitmer declared a statewide state of emergency.<sup>1</sup> Over the next several weeks, the governor issued executive orders suspending certain requirements related to the provision of health care in order to expedite health systems capacity and access to care. As those orders expired, they were replaced by updated orders, as described below. The bills would codify the provisions of those orders into statute.

[Note: while the bills refer to Executive Order 2020-25, 2020-30, and 2020-49, the former two EOs were recently rescinded and replaced. It is presumed that the bills are intended to codify the provisions of Executive Orders 2020-56, 2020-61, and 2020-49]

### **Executive Order 2020-56<sup>2</sup> (rescinded and replaced Executive Order 2020-25<sup>3</sup>)**

Executive Order 2020-56, signed April 21 and effective through May 19, rescinded and replaced EO 2020-25. The order allows pharmacists to do any of the following:

- Dispense emergency refills of up to a 60-day supply of maintenance medication that is not a controlled substance, if the pharmacist believes that failure to refill the prescription could adversely affect a patient's well-being. The pharmacist must inform the patient that the prescription was refilled under the executive order and inform the prescriber of the refill in a reasonable time period. Before refilling the prescription, the

<sup>1</sup> Executive Order 2020-04, issued March 10, 2020 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-04.pdf>); rescinded and replaced on April 1, 2020 with Executive Order 2020-33 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-33.pdf>).

<sup>2</sup> Executive Order 2020-56, issued April 21, 2020: <http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-56.pdf>

<sup>3</sup> Executive Order 2020-25, issued March 25, 2020: <http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-25.pdf>

pharmacist, clinic, or mobile pharmacy must make (and document) reasonable efforts to communicate with the prescriber. A prescriber cannot incur criminal or civil liability or licensing disciplinary action because a pharmacist refilled a prescription as described above.

- Operate a pharmacy in an area not designated on the pharmacy license as long as this does not involve preparing certain sterile drug products for immediate inpatient administration.
- Dispense or administer drugs as needed to treat COVID-19 under protocols established by the Centers for Disease Control and Prevention (CDC) or the National Institute of Health or as determined appropriate by appropriate personnel of the Department of Health and Human Services (DHHS).
- Substitute a therapeutically equivalent medication for one subject to critical shortages without a prescriber's authorization. The pharmacist must inform the patient that the prescription was refilled under the order and inform the prescriber of the refill in a reasonable time period. A prescriber cannot incur criminal or civil liability or licensing disciplinary action because a pharmacist refilled a prescription as described above.
- Supervise pharmacy technicians and other pharmacy staff remotely under certain specified parameters, although a technician cannot perform compounding without a pharmacist on the premises.

The order also allows preceptors to supervise student pharmacists remotely to fulfill eligibility for licensure and avoid delaying graduation.

The order requires insurers and health maintenance organizations that provide prescription drug benefits to cover emergency refills as described above. Insurers and HMOs must also allow for early refills of all 30-day or 60-day covered prescription maintenance medications to allow for up to a 90-day supply to be dispensed by a pharmacy, whether mail-order or in-person. Insurers and HMOs may still apply policy or contract provisions governing out-of-network benefits and cost-sharing.

The order requires pharmacies and wholesale distributors licensed in good standing out of state to be considered licensed to do business in Michigan, with some restrictions on importing controlled substances and (for pharmacies) sterile compounding services.

Finally, the order generally provides that strict compliance with conflicting laws or rules is suspended, then specifically cites statutory and regulatory provisions to which this suspension applies.

A willful violation of the order is a misdemeanor.

**Executive Order 2020-61<sup>4</sup> (rescinded and replaced Executive Order 2020-30<sup>5</sup>)**

Executive Order 2020-61, issued April 26, rescinded and replaced EO 2020-30. EO 2020-61 generally suspends scope of practice and licensing requirements for health care professionals.

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<sup>4</sup> Executive Order 2020-61, issued April 26, 2020: <http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-61.pdf>

<sup>5</sup> Executive Order 2020-30, issued March 29, 2020: <http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-30.pdf>

Among other things, EO 2020-61 does all of the following:

- Suspends the requirement that certain professionals operate under supervision and, if applicable, a written practice agreement (and exemption from civil, criminal, or administrative penalty related to a lack of such an agreement or supervision) for the following in the specified instances:
  - Physician assistants (PAs)
  - Advanced practice registered nurses (APRNs), including nurse anesthetists
  - Licensed practical nurses (LPNs)
  - Licensed pharmacists
- Temporarily suspend all provisions of Article 15 (Occupations) of the Public Health Code, in whole or in part, as necessary to allow health care professionals licensed in other states to practice.
- Allows registered nurses (RNs) and LPNs to order collection of nose and throat swabs for COVID-19 tests.
- Allows designated health care facilities to allow students studying to be health care professionals to volunteer or work as needed.
- Allows medical students, physical therapists, and emergency medical technicians to serve as respiratory therapist extenders.
- Exempts licensed health care professionals and designated health care facilities from liability for injuries sustained during the COVID-19 response, unless the injury or death was caused by gross negligence.
- Suspends laws and regulations that require exams, fingerprinting, or continuing education of health care professionals.
- Extends certifications in basic life support, advanced cardiac life support, and first aid.

**Executive Order 2020-49<sup>6</sup> (rescinded and replaced Executive Order 2020-13<sup>7</sup>)**

Executive Order 2020-49, issued April 14, suspends certain regulatory requirements for health care facilities and health care providers. EO 2020-49 is in effect through May 12. The order authorizes the Department of Health and Human Services (DHHS) to issue an emergency certificate of need to an applicant and to defer strict compliance with the procedural requirements for emergency certificates of need prescribed by section 22235 of the Public Health Code until the end of the declared states of disaster and emergency. The Department of Licensing and Regulatory Affairs (LARA) can grant and renew waivers to allow licensed hospitals in Michigan to construct, acquire, or operate a temporary or mobile facility for any health care purpose, regardless of where the facility or hospital is located or the number of beds the hospital has. (Section 21564 of the Public Health Code, under which the waivers are granted, ordinarily limits eligibility to nonurban hospitals with fewer than 100 beds.)

The order allows LARA to issue a temporary registration as a certified nurse to an applicant regardless of whether the applicant demonstrates that he or she has successfully completed the examination requirements of sections 21911 and 21913 of the Public Health Code. The temporary registration is valid for 28 days, and LARA can renew it until the end of the declared states of disaster and emergency. LARA can also renew a license to practice, regardless of

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<sup>6</sup> Executive Order 2020-49, signed April 14, 2020: <http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-49.pdf>

<sup>7</sup> Executive Order 2020-13, signed March 17, 2020: <http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-13.pdf>

whether the licensee has satisfied applicable continuing education requirements, under Parts 170 (Medicine), 172 (Nursing), 175 (Osteopathy), 177 (Pharmacy Practice and Drug Control), and 187 (Respiratory Care) of the Public Health Code. LARA can also recognize hours worked responding to the COVID-19 pandemic as hours toward required continuing education courses or programs.

Finally, the order authorizes LARA to allow a non-nursing assistant (such as an activity coordinator, social worker, or volunteer) to help feed or transport a patient or resident in a manner consistent with the patient's or resident's care plan.

**House Bills 5715, 5733, and 5737** would respectively amend the Public Health Code, the Mental Health Code, and the Adult Foster Care Licensing Act to codify provisions from Executive Order 2020-61 that suspend fingerprinting requirements for certain persons under those acts.

House Bill 5715 would additionally incorporate into the Public Health Code provisions from EO 2020-49 authorizing an expedited emergency certificate of need process and waivers for temporary or mobile health care facilities.

MCL 333.20173a et seq. (HB 5715)

MCL 330.1134a and proposed MCL 330.1134b (HB 5733)

MCL 400.734b and proposed MCL 400.734d (HB 5737)

**House Bill 5721** would amend the Insurance Code to codify provisions of EO 2020-56 that require health insurance policy coverage of emergency and early refills.

MCL 500.3406o and proposed 500.3406v

**House Bill 5724** would amend the Public Health Code to codify provisions of Executive Orders 2020-49, 2020-56, and 2020-61, described above, that suspend certain requirements regarding scope of practice, licensing, dispensing of drugs, and other regulatory requirements.

MCL 333.16101 and proposed MCL 333.16113 and 333.17715

## **FISCAL IMPACT:**

**House Bill 5715** would have fiscal implications for the DHHS Certificate of Need (CON) program. Under the bill, DHHS costs would be drastically reduced as the process for CON review would be more simplified than the current statutory regular CON or emergency CON process. DHHS indicates that there are no fees charged for emergency CONs, so there would be no revenue to the CON program. CON fees are established in statute under MCL 333.20161(3) and are used only to support the CON program. Current year funding for the CON program is \$2.8 million, primarily from fee revenue.

House Bill 5715 would not have a significant fiscal impact on LARA. By allowing for the temporary suspension of laws and regulations requiring fingerprinting of individuals for employment with, independent contracting with, or clinical privileges to a covered facility, there would be a temporary reduction in fees associated with fingerprinting. The fee for fingerprinting and a background check currently totals \$42 (\$30 state-level for the Michigan

State Police check and \$12 for the Federal Bureau of Investigation check). While revenues would be temporarily reduced, the volume of fingerprints processed by the MSP would also be temporarily reduced.

**House Bill 5721** would not have a significant fiscal impact on the Department of Insurance and Financial Services or any other unit of state or local government.

**House Bill 5724** would have an indeterminate fiscal impact on LARA. Revenues from various health professions licensing fees would likely decrease, as the bill would allow individuals licensed to practice health professions in other states to practice in this state. The bill would also reduce revenues from fingerprinting activities. The fee for fingerprinting and a background check currently totals \$42 (\$30 state-level for the Mcheck and \$12 for the Federal Bureau of Investigation check). While revenues would be temporarily reduced, the volume of fingerprints processed by the MSP would also be temporarily reduced.

**House Bill 5733** would have a negligible fiscal impact on the state and local units of government.

**House Bill 5737** would not have a significant fiscal impact on LARA or other units of state or local government. By allowing for the temporary suspension of laws and regulations requiring fingerprinting of individuals for employment or independent contracting with adult foster care facilities, there would be a temporary reduction in fees associated with fingerprinting. The fee for fingerprinting and a background check currently totals \$42 (\$30 state-level for the Michigan State Police check and \$12 for the Federal Bureau of Investigation check). While revenues would be temporarily reduced, the volume of fingerprints processed by the MSP would also be temporarily reduced.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.