

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CREATING A SCHEDULE OF FINES FOR
VIOLATION OF APRIL 1, 2020 EMERGENCY ORDER
REGARDING EXECUTIVE ORDERS 2020-11, 2020-20, AND 2020-21

EMERGENCY RULES

Filed with the Secretary of State on April 2, 2020

These rules take effect upon filing with the Secretary of State and shall remain in effect for 6 months.

(By authority conferred on the department of health and human services by sections 2221, 2226, 2233, 2253, and 2262 of the public health code, 1978 PA 368, MCL 333.2221, 333.2226, 333.2233, 333.2253, and 333.2262, section 48 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.248, and Executive Reorganization Order No. 2015-1, MCL 400.227)

FINDING OF EMERGENCY

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, Governor Whitmer issued Executive Order No. 2020-4 declaring a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 to 30.421, and the Emergency Powers of the Governor Act, 1945 PA 302, as amended, MCL 10.31 to 10.33. And in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, the Governor issued Executive Order 2020-33 on April 1, 2020. 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. As of April 1, 2020, at least 9,334 people have been confirmed to have COVID-19; many thousands more are likely infected but have not been tested; and 337 people have died. Hospitals in the regions with the largest number of cases report that their beds are full or nearly full and convention centers and dormitories are being converted into provisional medical care facilities to cope with the overflow.

April 2, 2020

On March 16, 2020, the Governor issued Executive Order No. 2020-11 (EO 2020-11), which temporarily prohibits large assemblages and events and temporarily closes schools. On March 22, 2020, the Governor issued Executive Order No. 2020-20 (EO 2020-20), which places temporary restrictions on the use of places of public accommodation. On March 23, 2020, the Governor issued Executive Order No. 2020-21 (EO 2020-21), which temporarily restricts gatherings and travel and prohibits in-person work that is not necessary to sustain or protect life. These orders aim to promote social distancing, which public health experts agree is the best way currently available to slow the spread of the disease and prevent it from overwhelming the health-care system.

On April 2, 2020, I issued an emergency order under section 2253 of the public health code, 1978 PA 368, MCL 333.2253(1) (Emergency Order). The Emergency Order concluded that COVID-19 has reached epidemic status in Michigan. Further, the Emergency Order concluded that control of the epidemic is necessary to protect the public health, and that it is necessary to establish procedures to be followed during the epidemic to ensure continuation of essential public health services and enforcement of health laws. The Emergency Order requires, among other things, that every person, as that term is defined in section 1106 of the public health code, 1978 PA 368, MCL 333.1106, in this State must comply with the procedures and restrictions outlined in EO 2020-11, EO 2020-20, and EO 2020-21, and the instructions provided in their accompanying FAQs.

Ensuring compliance with EO 2020-11, EO 2020-20, and EO 2020-21, and any future orders that rescind and replace these orders, requires identifying appropriate methods to enforce these orders. In addition to criminal prosecution for violating the Governor's Executive Orders, I find that civil penalties would be an effective supplementary method of deterring violations of EO 2020-11, EO 2020-20, and EO 2020-21, and any future orders that rescind and replace these orders.

The Michigan Department of Health and Human Services has authority to create a schedule of civil monetary penalties under section 2262 of the public health code, 1978 PA 368, MCL 333.2262(1), and would, under normal circumstances, follow the standard rulemaking process, including the notice and participation procedures required by sections 41 and 42 provided for in the Michigan Administrative Procedures Act of 1969 (APA), 1969 PA 306, MCL 24.241 and 24.242. Here, if the standard rulemaking process were followed, monetary civil penalties would not go into effect until well after they could provide useful deterrent measures. The resulting delay would result in less compliance with the Emergency Order, contribute to the spread of COVID-19, and exacerbate the current state of emergency. I therefore find that preservation of the public health, safety, and welfare requires promulgation of emergency rules under section 48 of the APA, MCL 24.248, to create a schedule of civil monetary penalties under the Director's authority in section 2262 of the public health code, 1978 PA 368, MCL 333.2262(1).

Rule to Enforce Emergency Order Regarding Executive Orders 2020-11, 2020-20, and 2020-21:

Rule 1. Violations and penalty.

(1) A violation of the April 1, 2020 Emergency Order is subject to a penalty of up to \$1,000 for each violation or day that a violation continues.

(2) For a person, as that term is defined in section 1106 of the public health code, 1978 PA 368, MCL 333.1106, regulated by a licensing agency, violations must also be referred to the relevant licensing agencies for additional enforcement action as determined by the licensing agency.

(3) No place of religious worship, when used for religious worship, is subject to penalty under subrules (1) or (2) of this rule.

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES



Robert Gordon
Director

Date:

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248(1), I hereby concur in the finding of the Department of Health and Human Services that circumstances creating an emergency have occurred and that preservation of the public health, safety, and welfare requires promulgation of the above rule.



Honorable Gretchen Whitmer
Governor

Date: April 2, 2020 3:08pm