

MICHIGAN SOCIETY OF EYE PHYSICIANS AND SURGEONS

Michigan Executive Orders and Impact on Medical Practices

Updated April 27, 2020

Michigan Executive Orders issued in response to COVID-19 impact Michigan medical practices as providers of medical services and as employers. The goals of the Executive Orders are to mitigate the spread of COVID-19 and to protect Michigan's citizens, health care system and other critical infrastructure. Willful violations of the Executive Orders are misdemeanors.

Through April 26, 2020, the Governor has issued 56 Executive Orders related to the COVID-19 pandemic. Executive Orders which affect medical practices include 2020-37, 2020-17, 2020-30 and 2020-59. Other Executive Orders, including Executive Order 2020-36, affect employers generally, including medical practices. In addition, some county and local governments have issued their own emergency orders.

The following are key points for physicians and medical practices:

- Medical practices should limit their in-person patient visits to essential services and those not subject to postponement under Executive Order 2020-17.
- Staffing must be limited to necessary clinical and non-clinical staff.
- The requirements of Executive Orders 2020-37, 2020-17, 2020-30 and 2020-59 and Oakland County Emergency Order 2020-7 (applicable only in Oakland County) must be followed.
- If patient encounters do not require in-person visits, physicians can consider telemedicine encounters.
- Even if the office is closed to patients, physician medical practices are permitted to conduct minimum basic operations which require designated workers to be present in-person at the office, subject to the requirements of Executive Order 2020-59. All other workers who can work remotely would need to do so if authorized by the practice to do so.
- Adhere to the Centers for Disease Control and Prevention (CDC) recommendations for infection prevention and control.
- Check with national specialty associations for further guidance on nonessential versus essential encounters.

Executive Order [2020-37](#)

This Executive Order, issued on April 5, 2020, imposes limited and temporary restrictions on the entry of individuals into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities through Sunday, May 3, 2020 at 11:59 pm. This Executive Order supersedes Executive Order [2020-7](#), which was issued on March 14, 2020 and has been rescinded. Previously, the Michigan Department of Health and Human Services confirmed that “any place that offers health care services is considered a health care facility and is subject to Executive Order 2020-07.” This includes physician-owned and operated medical practices. See Executive Order 2020-7 [questions and answers](#).

Under Executive Order 2020-37, the following persons are prohibited from entering the above-mentioned facilities including medical practices:

- Persons who are not necessary for the provision of medical care, the support of activities of daily living, or the exercise of power of attorney or court-appointed guardianship for an individual under the facility's care;
- Persons who are not a parent, foster parent, or guardian of an individual who is 21 years of age or under and who is under the facility's care;
- Persons who are not visiting an individual under the facility's care that is in serious or critical condition or in hospice care; and
- Persons who are not visiting under exigent circumstances or for the purpose of performing official governmental functions.

The Executive Order requires all health care facilities, including medical practices, to screen all individuals each time before they enter the facility. This applies to all permitted visitors and clinical and non-clinical staff. These individuals must be evaluated for symptoms of a respiratory infection, such as fever, cough, shortness of breath, or sore throat, and contact in the last 14 days with someone with a confirmed diagnosis of COVID-19. If an individual does not meet such screening criteria, he or she cannot enter the practice.

The State has addressed the meaning of "contact" for the purposes of health care workers who are treating COVID-19 patients as follows:

"Contact for the purposes of health care exposures is defined as follows: a) being within approximately 6 feet (2 meters), of a person with COVID-19 for a prolonged period of time (such as caring for or visiting the patient; or sitting within 6 feet of the patient in a healthcare waiting area or room); or b) having unprotected direct contact with infectious secretions or excretions of the patient (e.g., being coughed on, touching used tissues with a bare hand)."

See [questions and answers](#) on Executive Order 2020-7.

The Executive Order does not address the evaluation of patients seeking to enter a medical practice or other health care facility for treatment and services. It is recommended that all medical practices adhere to the Centers for Disease Control and Prevention (CDC) recommendations for [infection prevention and control](#) which include patient screening protocols. The CDC handout, [Get Your Clinic Ready for Coronavirus Disease 2019 \(COVID-19\)](#), offers step-by-step guidance on how to proceed.

Executive Order 2020-30

This Executive Order, issued on March 29, 2020, provides temporary relief from certain restrictions and requirements governing the provisions of medical services in support of the response to the COVID-19 pandemic. It continues in effect for the duration of the state of emergency initially declared in Executive [2020-4](#) on March 10, 2020 and which is now governed by Executive Order [2020-33](#) issued on April 1, 2020.

Executive Order 2020-30 temporarily suspends laws under Article 15 of the Public Health Code relating to scope of practice, supervision and delegation to the extent necessary to allow licensed, registered or certified health care professionals, as well as certain medical and other health care professional students, and qualified volunteers or personnel, to provide medical or other services within a “designated health facility” that are necessary to support the facility’s response to the COVID-19 pandemic and are appropriate to the professional, student or volunteer’s education, training and experience as determined by the facility in consultation with the facility’s medical leadership. In addition, the Executive Order clarifies that medical services provided in accordance with the Executive Order will not be subject to criminal, civil or administrative penalty related to a lack of physician supervision or the lack of a written practice agreement with a licensed physician.

The Executive Order defines “designated health facility” as hospitals, freestanding surgical outpatient facilities, nursing homes, and other facilities which qualify as “health facilities” under MCL §333.20106(1), state-owned surgical centers, state-operated outpatient or veteran facilities, and entities used as surge capacity by any of the foregoing facilities.

The Executive Order permits health care professionals that are licensed and in good standing in another state to practice their profession in Michigan without criminal, civil or administrative penalty related to lack of licensure. The Executive Order also confirms that unlicensed physicians, such as physicians who have retired and allowed their medical license to lapse within 5 years or less, may provide medical services to COVID-19 patients or other services in support of the COVID-19 pandemic without a license in accordance with MCL §333.16171.

To address concerns of professional liability and other liability exposure related to volunteering or otherwise provided services in support of the response to the COVID-19 pandemic, the Executive Order provides a number of immunity and other protections, including the following:

- Licensed or unlicensed health care professionals (including retired physicians and medical students) who provide medical or other services to COVID-19 patients, or otherwise in support of the state’s response to the COVID-19 pandemic are not liable for malpractice or other injury claims absent gross negligence.
- Services provided by unlicensed volunteers or students at a designated health care facility are entitled to the same rights and immunities provided to state employees under MCL §30.411(1)(c).
- Temporary suspension of laws and regulations relating to examination, fingerprinting and continuing medical education requirements as a condition of licensure, certification, registration or the renewal of a license, certification or registration of health professionals. Clarification will be needed as to whether this temporary suspension applies only if licensure or renewal of licensure is sought during the emergency declaration, or if leniency will be offered to licensees regarding these requirements during the next renewal cycle.

- Temporary suspension of laws and regulations relating to fingerprinting as a condition of licensure and certification for hospitals, nursing homes, county medical care facilities, or psychiatric hospitals.
- Extension of professional certifications in basic life support, advanced cardiac life support, or first aid throughout the duration of the emergency declaration, even if they are otherwise set to expire during the emergency.

Executive Order 2020-17

This Executive Order 2020-17, issued on March 20, 2020, imposes temporary restrictions on non-essential medical and dental procedures. It continues in effect for the duration of the state of emergency initially declared in Executive [2020-4](#) on March 10, 2020 and which is now governed by Executive Order [2020-33](#) issued on April 1, 2020. Pursuant to the Executive Order 2020-33, all covered facilities (hospitals, freestanding surgical outpatient facilities, dental facilities, and all state-operated outpatient facilities) are required to implement a plan to temporarily postpone all non-essential procedures. A “non-essential procedure” is defined as “a medical or dental procedure that is not necessary to address a medical emergency or to preserve the health and safety of a patient, as determined by a licensed medical provider.”

Additionally, the covered facilities noted above and medical centers or offices that perform elective surgeries or cosmetic plastic surgeries are required to minimally postpone joint replacement, bariatric surgery, and cosmetic surgery. Exceptions can be made for emergency or trauma-related surgery where postponement would significantly impact the health, safety, and welfare of the patient. A plan for a covered facility that performs medical procedures should exclude from postponement: surgeries related to advanced cardiovascular disease (including coronary artery disease, heart failure, and arrhythmias) that would prolong life; oncological testing, treatment, and related procedures; pregnancy-related visits and procedures; labor and delivery; organ transplantation; and procedures related to dialysis.

Although this Executive Order does not explicitly state that it applies to physician medical practices and clinics, it should be treated as applicable to them, given its broad scope and the State’s position that Executive Order 2020-7 applies to medical practices. Physician medical practices, urgent care centers and clinics should consider whether non-urgent procedures should be rescheduled or, if appropriate, switched from in-person to telemedicine. Physicians may want to check whether their national specialty societies have issued recommendations on such matters.

Executive Order 2020-59

This Executive Order was issued on April 24, 2020 and requires Michigan residents to stay in their place of residence to the maximum extent feasible through May 15, 2020 at 11:59 pm. It supersedes Executive Order [2020-42](#) issued on April 9, 2020, which in turn superseded Executive Order [2020-21](#) issued on March 23, 2020.

Under the Executive Order, only persons whose jobs are necessary to sustain or protect life, to conduct minimum basic operations, or to perform resumed activities may leave their

residences to go to work at the employer's premises. Only businesses and operations that employ critical infrastructure workers or workers who perform resumed activities may continue in-person operations, subject to certain conditions. Clinical health care workers are included as critical infrastructure workers ("necessary to sustain or protect life"). If a medical practice chooses to remain open, the medical practice must determine which clinical health care workers are to continue to report to work, and whether any non-clinical staff is required to work on site to strictly conduct minimum basic operations, which are limited to the performance of functions such as processing transactions (e.g., payroll, employee benefits, etc.), security (e.g., the reception counter, etc.), or to facilitate the ability of other workers to work remotely. If such non-clinical staff is necessary, they must be so designated by the medical practice. These designations must be confirmed in writing. A designation can be written on paper or in an email and should identify the employee by name and the basis for the designation (e.g., processing transactions). It is not necessary for workers to carry copies of their designations when they leave home for work, but it is advisable to do so. Clinical staff do not need to be designated as critical infrastructure workers, but it may be helpful for medical practices to confirm their status in writing if they do not have hospital-issued identification cards. Medical practices do not employ workers who perform resumed activities, which are defined as tasks such as processing remote orders for delivery or curbside pickup, landscaping, and other non-medical office tasks.

Executive Order 2020-59 also requires that:

- Any individual able to medically tolerate a face covering must wear a covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space.
- All businesses and operations whose workers perform in-person work must, at a minimum, provide non-medical grade face coverings to their workers.
- Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers who interact with the public.
- The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to persons who wear a mask under this order.

Medical practices that remain open should limit their in-person patient encounters to those essential to maintaining the life and health of patients, including those encounters not subject to postponement under Executive Order 2020-17. Additionally, medical practices should consider whether medical visits can be conducted via telemedicine. Medical practices that remain open for in-person appointments must comply with visitor restrictions and screening requirements pursuant to Executive Order 2020-37, as well as adopt social distancing practices and other mitigation measures which include, but are not limited to:

- Developing a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available [here](#).
- Such plan must be available at the office.
- Restricting the number of workers present on premises to no more than is strictly necessary to perform minimum basic operations and critical infrastructure functions.
- Promoting remote work to the fullest extent possible.
- Keeping staff and patients on premises at least six feet from one another to the maximum extent possible.
- Increasing standards of facility cleaning and disinfection to limit worker and patient exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
- Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
- Any other social distancing practices and mitigation measures recommended by the Centers for Disease Control.

Oakland County Emergency Order 2020-7

This Emergency Order was issued on April 13, 2020 by the Oakland County Health Division and beginning April 14, 2020, requires Oakland County business and operations that remain open under Executive Order 2020-42 to take certain precautions to reduce the transmission of COVID-19. The Emergency Order exempts from the requirements of the Emergency Order healthcare organizations with an infection control program in place. The Emergency Order supersedes Amended Emergency Order 2020-5 issued on March 25, 2020.

Under this Emergency Order, businesses (including medical practices without an infection control program in place) must continue to implement a daily screening program for all staff that includes asking the staff member the following questions: (1) whether he or she has symptoms including, but not limited to: fever, cough (excluding cough due to a known chronic cough), shortness of breath, sore throat, and/or diarrhea (excluding diarrhea due to known medical reason), (2) whether the staff member has had any close contact in the last 14 days with someone with a diagnosis of COVID-19, and (3) whether the staff member has traveled internationally or domestically in the last 14 days. As indicated above, this updated screening criteria now excludes cough and diarrhea symptoms that are due to a known chronic or other medical reason. If a medical practice has a touchless thermometer available, the Emergency Order strongly recommends that the medical practice perform a temperature check of the staff member to confirm that the staff member does not have a fever in lieu of verbal confirmation.

If the staff member has a fever, or answers “yes” to having any of the listed symptoms, the staff member must be excluded from the medical practice until at least 72 hours have passed with no fever (without the use of medicine that reduces fevers) and other symptoms have improved, and at least 7 days have passed since the staff member’s symptoms first appeared. If the staff member answers “yes” to having close contact with someone with a diagnosis of COVID-19, the staff member must be excluded from the medical practice until 14 days have passed since the staff member had such close contact unless the medical practice is involved in the mitigation of risk during the pandemic (e.g., if the medical practice treats COVID-19 patients). If the staff member

has traveled internationally or domestically in the last 14 days, the staff member must be excluded from the medical practice until at least 14 days have passed since the staff member has traveled unless the purpose of the travel was related to supply chain and/or critical infrastructure travel/movement (e.g., travel related to providing medical services).

The Emergency Order also requires staff members providing essential services involving goods and services and face-to-face interaction with the public where social distancing measures are not possible (e.g., in-person patient interactions) to wear facial coverings consistent with CDC guidelines. This includes facial covers, whether store bought or homemade, which snugly covers the face and mouth and secured with ties or ear loops. The Emergency Order discourages the use of N95 rated masks or surgical masks unless they are being used by healthcare workers and other persons engaged in life saving activities. Medical practices and businesses required to wear facial coverings under the Emergency Order are encouraged to implement these precautions immediately and must be in compliance by April 27, 2020. In addition, Medical practices and businesses remaining open must recommend that the general public comply with CDC guidance for facial covers in public settings and publish the Emergency Order at the entrance of the medical practice or other facility and to members of the public at large by all reasonable means available. The Emergency Order further confirms that the Emergency Order does not change or alter any social distancing requirements imposed by any other Emergency Order.