What has Changed with the Re-Opening of Northern Michigan?

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Today’s Presenters:

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Introduction and Overview

• About Mika Meyers
• The contents of Executive Orders 2020-91 and 2020-92
  • What’s New and What’s the Same?
• Enforcement
• Q & A’s
History and Background

- May 7, Executive Order 2020-77 Issued
  - Allowed resumption of Manufacturing Operations pursuant to stringent requirements
    - See Executive Order 2020-77 part 11(k)
- Simultaneously, MI Safe Start Plan Released
# MI SAFE START PLAN

## 1. Uncontrolled growth
- **What's happening with the disease?**
  - Increasing number of new cases every day, likely to overwhelm the healthcare system.
- **What do we need to do to stay safe?**
  - Stay Home, Stay Safe: Strict social distancing, travel restrictions, face coverings, hygiene best practices, remote work.
- **What work can we do?**
  - Critical infrastructure: First responders, health care workers, critical manufacturing, food and agriculture, essential retail (e.g., grocery), transportation.
- **What factors determine progression to next phase?**
  - Analysis shows epidemic growth rates slowing, hospital and treatment capacity built, alternative care facilities established, infrastructure for crisis response and data systems to monitor progression are in place.

## 2. Persistent spread
- **What's happening with the disease?**
  - Continue to see high case levels with concern about health system capacity.
- **What do we need to do to stay safe?**
  - Stay Home, Stay Safe: Strict social distancing, travel restrictions, face coverings, hygiene best practices, remote work.
- **What work can we do?**
  - Critical infrastructure: Additional types of recreation allowed.
- **What factors determine progression to next phase?**
  - Cases, deaths decline for extended period, hospital and treatment capacity in place, improved testing, contact tracing and containment capacity.

## 3. Flattening
- **What's happening with the disease?**
  - Case growth is gradually declining.
- **What do we need to do to stay safe?**
  - Safer at Home: Continued distancing, increased face coverings, no gatherings.
- **What work can we do?**
  - Critical infrastructure: Specified lower-risk businesses with strict workplace safety measures: construction, manufacturing, real estate, outdoor work.
- **What factors determine progression to next phase?**
  - Cases, hospitalizations and deaths are clearly declining.

## 4. Improving
- **What's happening with the disease?**
  - Cases, hospitalizations and deaths are clearly declining.
- **What do we need to do to stay safe?**
  - Safer at Home: Continued distancing, face coverings, safe workplace practices, small gatherings.
- **What work can we do?**
  - Additional lower-risk businesses with strict safety measures: other retail, with capacity limits, offices, but telework required if possible.
- **What factors determine progression to next phase?**
  - Cases and deaths at low absolute rates per capita, health system capacity is strong, robust testing, contact tracing and containment protocols in place.

## 5. Containing
- **What's happening with the disease?**
  - Continued case and death rate improvements and outbreaks can be quickly contained.
- **What do we need to do to stay safe?**
  - Stay Safe: Adherence to new guidelines, continued distancing, coverings, mitigated workplaces, increased size gatherings.
- **What work can we do?**
  - Additional lower-risk businesses, with strict mitigation measures: restaurants / bars, K-12 and higher ed (live instruction), travel.
- **What factors determine progression to next phase?**
  - All businesses: Events and gatherings of all sizes with new safety guidance and procedures, social distancing rules are relaxed and large events are permitted.

## 6. Post-pandemic
- **What's happening with the disease?**
  - Community spread not expected to return.
- **What do we need to do to stay safe?**
  - Sufficient community immunity and availability of treatment.
- **What work can we do?**
  - Most businesses, with strict mitigation measures: restaurants / bars, K-12 and higher ed (live instruction), travel.
- **What factors determine progression to next phase?**
  - High uptake of an effective therapy or vaccine.
• Executive Orders 2020-91 and 2020-92 separate the requirements set forth in previous Executive Orders, such as Executive Order 2020-77
• Executive Order 2020-91 provides the rules for businesses and operators
• Executive Order 2020-92 relaxes some requirements of the stay-at-home restrictions set forth in Executive Order 2020-77 for Regions 6 and 8
Executive Order 2020-92 – What’s New?

- The 8 MERC regions previously identified by the MI Safe Start Plan are now formally defined (See Section 2)
- Region 6: Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, and Emmet
- Region 8 is the entire Upper Peninsula
Executive Order 2020-92 – What’s New?

Effective May 22, the following people may leave home in Regions 6 and 8:

- Individuals to go to a restaurant or retail store
- Individuals can also travel to attend a social gathering of up to 10 people
- Workers may travel
  - If necessary to perform retail activities (except in places of public accommodation)
  - To work in an office, but only to the extent such work is not capable of being performed remotely
  - Workers in restaurants and bars, subject to the restrictions of Executive Order 2020-91
Executive Order 2020-92 – What’s New?

- Workers necessary to prepare a workplace to comply with the standards of Executive Order 2020-91 may leave their homes now.
Executive Order 2020-92

• While facemasks are still required in enclosed public spaces, an individual may be required to remove a facemask for identification purposes, including at a restaurant or bar.
Executive Order 2020-92 – Local Restrictions

• Executive Order 2020-92 provides that nothing in the subsection permitting restaurants to open in Regions 6 and 8 shall “abridge or otherwise modify the existing power of a local government to impose further restrictions on restaurants or bars.”

• Local Health Departments: MCL 333.2453 – “If a local health officer determines that control of an epidemic is necessary to protect the public health, the local health officer may issue an emergency order to prohibit the gathering of people for any purpose and may establish procedures to be followed by persons, including a local government entity, during the epidemic to insure continuation of essential public health services and enforcement of health laws.”

• Ordinances
Outside of Regions 6 and 8, public and private gatherings remain prohibited, as does travel not otherwise permitted by the order (including to vacation rentals).

Permitted Business Activities Outside of Regions 6 and 8:

- Workers who are necessary to sustain or protect life as “critical infrastructure workers”
- Workers necessary to conduct minimum basic operations
- Workers who perform resumed activities
Executive Order 2020-92 – What’s The Same?

- Individuals
  - Outdoor recreational activities, in compliance with social distancing requirements
  - To perform tasks that are necessary to their health and safety
  - To obtain necessary supplies
  - To pick-up non-necessary supplies curbside
  - To care for family
  - As required by court orders
Executive Order 2020-91 - All Employers

- Must have a COVID-19 Preparedness and Response Plan
  - In place by June 1 or within two weeks or resuming in-person activities
- Designate worksite supervisors to monitor and report on COVID-19 control strategies
  - Must be on-site at all times when employees are on-site
- Provide COVID-19 Training
  - Workplace infection control practices
  - Proper use of PPE
  - Steps to notify employer of COVID-19 symptoms or diagnosis
  - How to report unsafe working conditions

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Executive Order 2020-91 - All Employers

• Conduct daily entry self-screening protocol, including a questionnaire covering symptoms or confirmed exposure to COVID-19
• Keep everyone 6 feet apart to the extent possible, including through ground markings, signs, and physical barriers
• Provide face coverings
• Require face masks when 6 feet of separation cannot be maintained and consider face shields when 3 feet of separation cannot be maintained
Executive Order 2020-91 - All Employers

- Increase facility cleaning and disinfection
- Adopt protocols to clean and disinfect in the event of a positive COVID-19 case
- Make cleaning supplies available to employees and provide time for employees to wash or disinfect their hands
- Notify the local public health department and any co-workers, contractors, or suppliers who may have had contact in the event of a confirmed case of COVID-19
Executive Order 2020-91 - All Employers

- Avoid discharging, disciplining, or otherwise retaliating against employees who stay home or leave work when they are at particular risk of infecting others with COVID-19
- Establish a response plan in the event of a confirmed infection, including temporary closures of all or part of a worksite
- Restrict travel to essential travel only
- Encourage employees to use PPE and hand sanitizer on public transportation
- Promote remote work to the fullest extent possible
- Adopt any additional infection-control measures that are reasonable in light of the work performed at the worksite and the rate of infection in the surrounding community
Executive Order 2020-91 - Retail

- Create communications to inform customers of changes to store practices
- Establish lines to regulate entry, with markings for patrons to stand 6 feet apart. Explore alternatives to lines.
- Adhere to the following restrictions
  - For stores of less than 50,000 square feet:
    - 25% of total occupancy
    - No more than 4 people for every 1,000 square feet
    - Create 2 hours per week of dedicated shopping for vulnerable populations (people over 60, pregnant persons, those with chronic diseases)
Executive Order 2020-91 - Retail

- Post signs instructing customers of their legal obligation to wear a face covering
- Post signs informing customers not to enter if they are or have been sick
- Design spaces and activities to encourage employees and customers to maintain 6 feet of social distancing
- Install physical barriers at checkout or other service points
- Establish an enhanced cleaning and sanitizing protocol for high-touch areas such as restrooms, credit-card machines, keypads, counters, shopping-carts, and other surfaces
Executive Order 2020-91 - Retail

- Train employees on:
  - Appropriate cleaning procedures (including for cashiers between customers)
  - How to manage symptomatic customers
- Notify employees if employer learns an individual with COVID-19 has visited the store
- Limit staffing to the minimum number necessary to operate
Executive Order 2020-91 - Restaurants

- Limit Capacity to 50% of normal seating
- Require 6 feet of separation between different tables
- Create communication material for customers to inform them of changes to restaurant policies
- Close waiting areas and ask customers to wait in cars for a call when their table is ready
- Close self-serve food or drink options (ex: buffets, salad bars, drink stations)
Executive Order 2020-91 - Restaurants

- Provide physical guides to ensure that customers remain at least six feet apart in any lines
- Post signs at the entrance informing customers not to enter if they are or have been sick
- Post signs instructing customers to wear face coverings until they get to their table
- Require hosts and servers to wear face coverings in the dining area
- Require employees to wear face coverings and gloves in the kitchen area when handing food, consistent with FDA guidelines
Executive Order 2020-91 - Restaurants

- Limit shared items for customers and clean high-contact areas (tables, chairs, menus, payment tools, condiments)
- Train employees on:
  - Appropriate use of PPE in conjunction with food safety guidelines
  - Food safety health protocols
  - How to manage symptomatic customers upon entry or in the restaurant
Notify employees if the employer learns an individual with a confirmed case of COVID-19 has visited the store
Close the restaurant immediately if an employee shows multiple symptoms of COVID-19. Perform a deep clean consistent with FDA and CDC guidance.
Require a doctor’s written release before an employee with a confirmed case of COVID-19 can return to work
Install physical barriers at cash registers, bars, host stands, and other areas
Limit the number of employees in shared spaces, including kitchens, breakrooms, and offices.
Executive Order 2020-91 - Offices

- Assign dedicated entry points for all employees
- Provide visual indicators of appropriate spacing
- Take steps to reduce entry congestion and assure effectiveness of screening (ex: stagger start times, rotate employees in office)
- Require face covering in shared spaces, including during in-person meetings and in restrooms and hallways
- Increase distancing, provide visual cues to guide movement and activity
Executive Order 2020-91 - Offices

- Turn off water fountains
- Prohibit social gatherings and meetings that do not allow for social distancing or which create unnecessary movement
- Provide disinfecting supplies and require employees to wipe down workstations at least twice daily
- Post signs about the importance of personal hygiene
- Disinfect high-touch surfaces and minimize shared items
Executive Order 2020-91 - Offices

• Institute cleaning and communications protocols when employees are sent home with symptoms
• Notify employees if the employer learns an individual with a confirmed case of COVID-19 has visited the office
• Suspend all nonessential visitors
• Restrict all nonessential travel
Executive Order 2020-91

- Employers must maintain the following records:
  - COVID-19 Training provided to employees
  - Daily self-screening, including the questionnaire
  - Notifications given to the health department and co-workers, contractors, or suppliers who have come in contact with a person with a confirmed case of COVID-19
Enforcement Options and Responsibilities
Legal Basis of Executive Orders

• Public Act 302 of 1945 (MCL 10.31 et seq.)
  • No limitation on duration
  • “Reasonable orders, rules and regulations [the Governor] considers necessary to protect life and property or to bring the emergency situation within the affected area under control.”
• Emergency Management Act, Public Act 390 of 1976 (MCL 30.401 et seq.)
Challenges to Governor’s Authority

- The EMA includes a 28-day limitation on Governor’s authority without concurrence of both houses of Legislature, which has not been given.
- The EMA expressly states it shall not “limit, modify, or bridge the authority of the governor to proclaim a state of emergency pursuant to Act 302. . . .” MCL 30.417(d).
- The EOs have been challenged in Court by the Legislature. A decision from the Court of Claims is pending.
- *Michigan United for Liberty*. On May 19, the Court of Claims refused to issue a preliminary injunction for lack of showing of likelihood of success on the issue of standardless delegation of authority to Governor: May only act in case of emergency or disaster; actions must be reasonable and necessary.
Public Health Code Order

- Authorized in case of “imminent danger to health or lives of individuals” (MCL 333.2251) or in case of epidemic (MCL 333.2253).
- MDHHS Director Emergency Order dated April 2, 2020 and Emergency Rule.

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Penalties and Remedies

- Public Act 302:
  - Unspecified misdemeanor – punishable by less than one year imprisonment. (MCL 761.1)
  - No specific authorization for injunctive relief.
Emergency Management Act

- Misdemeanor: up to 90 days or $100 per day fine.
- Specific authorization for injunctive relief.
- Applicability questionable due to lack of legislative authorization for extension.

- House Bill 5709 is pending to reduce penalties under EMA to civil infractions: $100 for individual/ $500 for entities
Public Health Order

• Public Health Code: Violation is a misdemeanor, subject to up to 60 days imprisonment and $200 per day fine.
• In addition, may impose civil penalties up to $1,000 per day. MCL 333.2262. Implemented by DHHS emergency rule on April 2.
• Orders may be enforced by injunctive relief.
• MDHHS order also states that: “Law enforcement is specifically authorized to bar access to businesses and operations that fail to comply with the procedures and restrictions outlined . . . in the [Executive Orders]. County prosecutors are likewise specifically authorized to enforce this order to control the epidemic and to protect the public health in coordination with the appropriate law enforcement authority and, as necessary, the local health department.”

• Emergency Rule mandates referral of violations to licensing agencies like MLCC and professional licensing boards
Enforcement Responsibility

- Attorney General/State
  - Has authority to initiate local misdemeanor prosecution (People v Karalla, 35 Mich App 541 (1971)).
  - MDHHS may seek injunctive relief for enforcement of public health order. MCL 333.2255.
  - Adverse licensing action
Local Law Enforcement

- County prosecutor is authorized to prosecute misdemeanor violations.
- County prosecutor is specifically authorized to seek injunctions under Emergency Management Act, but not Act PA 302 of 1945.
- County prosecutors probably have authority to seek injunctive relief. MCL 49.153.
- Attorney General has admonished that county prosecutors and law enforcement officers have a “duty” to investigate violations of the law.
Other Enforcement Mechanisms

- Law enforcement may apply to the county prosecutor for issuance of a warrant for arrest for a misdemeanor.
- Peace officers also may arrest without a warrant if a misdemeanor is committed in their presence.  MCL 764.15.
Potential Remedies for Governor for Local Refusal to Enforce

- Potential misdemeanor penalties.
- Potential removal from officer or city or village elected officials for “willful neglect of duty.” MCL 168.207, MCL 168.327, and MCL 168.383.
Refusal to Comply With Masking and Social Distancing Requirements

• Appearance ticket or even arrest for misdemeanor violations under EO 2020-92, which include masking.
• Grounds for removal and arrest for trespass if refuse to leave premises after ordered to comply or leave by authorized personnel of establishment.
Questions?

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• May 21, Noon – 1 p.m., MML Monday Morning Morning Live: (Thursday Edition)