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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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IM-2020-06

### TABLE OF EXECUTIVE AND EMERGENCY ORDERS RELATED TO COVID-19

Governor Evers and his administration have taken numerous actions in response to the COVID-19 pandemic. This information memorandum provides a table outlining information on each of the executive and emergency orders that have been issued by Governor Evers and Department of Health Services (DHS) Secretary-Designee Palm in response to the COVID-19 outbreak as of the date of this publication.<sup>1</sup> For each executive and emergency order, the table identifies the official who issued the order, the authority cited by the official issuing the order, the expiration date provided by the terms of the order, and the current status of the order.

#### EXECUTIVE ORDERS

Order Number	Order Name	Issuing Official	Authority Cited	Expiration Date Cited in Order	Current Status
Executive Order #72, signed March 12	Relating to declaring a health emergency in response to the COVID-19 coronavirus	Governor	Wis. Const., generally; and ss. 100.305, 321.39, 323.10, 323.12, and 323.13	Not specified, generally; pursuant to s. 323.10, the state of emergency related to public health expires within 60 days (May 11) unless revoked or extended	In effect, in part; state of emergency expired
Executive Order #73, signed April 3	Relating to a special session of the Legislature to provide for an all-mail spring election and special election for the 7th congressional district during the COVID-19 pandemic	Governor	Wis. Const. art. IV, s. 11 and art. V, s. 4.	Not specified; special session adjourned pursuant to SJR1 on April 8	Concluded
Executive Order #74, signed April 6	Relating to suspending in-person voting on April 7, 2020, due to the COVID-19 pandemic	Governor	Wis. Const. preamble, art. IV, s. 11, art. V, ss. 1 and 4; and s. 323.12(4)(b)	Not specified; special session adjourned pursuant to SJR1 on April 8	Enjoined, but for call for special session; concluded

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<sup>1</sup> For more information regarding state and local officials' authority in a public health emergency, see Legislative Council Information Memorandum IM-2020-01, *Authority of Public Health Officials During a Public Health Emergency*, available at <http://lc.legis.wisconsin.gov>.

## EMERGENCY ORDERS

Order Number	Order Name	Issuing Official	Authority Cited	Expiration Date Cited in Order	Current Status
Emergency Order #1, signed March 13	Order for statewide school closure	DHS Secretary-designee	s. 252.02 (3) and at Governor's direction	Anticipated end date of April 6	Superseded by EMOs #8, 12, and 28
Emergency Order #2, signed March 14	Order for DOT permits to assist with grocery supply efforts	Governor	s. 323.12(4) and EO #72	March 28, except relief from certain federal and state motor carrier regulations is valid for: the duration of a motor carrier's assistance in the relief effort; April 11; or the duration of EO #72 (May 11) whichever is less	Expired, but provisions amended and extended by EMOs #14 and 24
Emergency Order #3, signed March 15	Order for DCF administrative rule suspension and emergency orders	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72, or until superseding emergency orders are issued)	Expired <sup>2</sup>
Emergency Order #4, signed March 16	Order prohibiting mass gatherings of 50 people or more	DHS Secretary-designee	s. 252.02 (3) and at Governor's direction	May 11 (duration of the public health emergency under EO #72, or until a superseding order is issued)	Superseded by EMOs #5, 8, 12, and 28
Emergency Order #5, signed March 17	Order prohibiting mass gatherings of 10 people or more	DHS Secretary-designee	s. 252.02 (3) and at Governor's direction	May 11 (duration of the public health emergency under EO #72, or until a superseding order is issued)	Superseded by EMOs #8, 12, and 28
Emergency Order #6, signed March 18	Order restricting the size of child care settings	DHS Secretary-designee	s. 252.02 (3) and at Governor's direction	May 11 (duration of the public health emergency under EO #72, or until a superseding order is issued)	Expired

<sup>2</sup> DCF has promulgated [Emergency Rule 2009](#) suspending and modifying various DCF rules due to COVID-19.

<b>Order Number</b>	<b>Order Name</b>	<b>Issuing Official</b>	<b>Authority Cited</b>	<b>Expiration Date Cited in Order</b>	<b>Current Status</b>
Emergency Order #7, signed March 18	Order to DWD regarding unemployment insurance	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72) or until superseding emergency orders are issued or until supplanted by rule promulgation	Supplanted by Em R2 006 <sup>3</sup>
Emergency Order #8, signed March 20	Updated mass gathering ban	DHS Secretary-designee	s. 252.02 (3) and at Governor's direction	May 11 (duration of the public health emergency under EO #72, or until a superseding order is issued)	Superseded by EMOs #12 and 28
Emergency Order #9, signed March 20	Order to DOC	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72, or until a superseding order is issued), though DOC may lift certain provisions at any time	Expired <sup>4</sup>
Emergency Order #10, signed March 21	DPI administrative rule suspension and emergency orders	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72, or until superseding emergency orders are issued)	Expired <sup>5</sup>
Emergency Order #11, signed March 22	PSC administrative rules suspensions	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72, or until superseding emergency orders are issued)	Expired
Emergency Order #12, signed March 24	Safer at home order	DHS Secretary-designee	s. 252.02 (3) and (6); all powers vested in DHS under EO #72; and at Governor's direction	8:00 a.m. on April 24, or until a superseding order is issued	Expired

<sup>3</sup> DWD has promulgated [Emergency Rule 2006](#), amending provisions in chs. DWD 127 and 128 related to work search actions, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic.

<sup>4</sup> DOC has filed [Scope Statement No. SS 045-20](#) for a proposed emergency rule relating to the secure custody and care of individuals in DOC's custody.

<sup>5</sup> One of the four DPI administrative rules suspended by EMO #10 is a deadline for private schools participating in the Milwaukee Parental Choice Program to submit an enrollment audit to DPI. 2019 Wisconsin Act 185 granted DPI authority to establish alternate deadlines for any parental choice program requirement occurring during a specific time period. This new authority will allow DPI to establish an alternate deadline for the required audit submission, even if EMO #10 is no longer in effect.

<b>Order Number</b>	<b>Order Name</b>	<b>Issuing Official</b>	<b>Authority Cited</b>	<b>Expiration Date Cited in Order</b>	<b>Current Status</b>
Emergency Order #13, signed March 26	Order to DWD regarding minor work permits	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72) or until superseding emergency orders are issued or until supplanted by rule promulgation	Expired <sup>6</sup>
Emergency Order #14, signed March 27	Relating to extending DOT emergency permits to assist with grocery supply efforts	Governor and DHS Secretary-designee	Wis. Const. art. V, s. 4; and ss. 252.02 and 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72, or until a superseding order is issued), with certain permits expiring April 11	Expired
Emergency Order #15, signed March 27	Temporary ban on evictions and foreclosures	Governor and DHS Secretary-designee	Wis. Const., generally; ss. 252.02 and 323.12(4); and at Governor's direction	May 26 (60 days from date of the order)	Expired
Emergency Order #16, signed March 27	Relating to certain health care providers and DSPS credentialing	Governor and DHS Secretary-designee	Wis. Const. art. V, s. 4; ss. 252.02(6) and 323.12(4); and EO #72	May 11 (duration of the public health emergency under EO #72, including any extensions)	Expired <sup>7</sup>
Emergency Order #17, signed March 27	DNR administrative rule suspension	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72, or until superseding emergency orders are issued)	Expired
Emergency Order #18, signed March 30	Relating to DCF administrative rule suspensions	Governor and DHS Secretary-designee	Wis. Const. art. V, s. 4; ss. 252.02 and 323.12(4); and EO #72	May 11 (duration of the public health emergency under EO #72, or until a superseding order is issued)	Expired <sup>8</sup>
Emergency Order #19, signed April 2	Appropriate use of COVID-19 information by law enforcement agencies, first responders, and public safety workers	Governor and DHS Secretary-designee	Wis. Const., generally; ss. 252.02 and 323.12(4); and at Governor's direction	May 11 (duration of the public health emergency under EO #72, subject to extension)	Expired

<sup>6</sup> DWD has promulgated [Emergency Rule 2008](#) relating to child labor permits.

<sup>7</sup> 2019 Wisconsin Act 185 authorizes certain forms of temporary practice until June 10, 2020 (30 days after the conclusion of the period covered by the public health emergency declared in EO #72).

<sup>8</sup> DCF has promulgated [Emergency Rule 2009](#) suspending and modifying various DCF rules due to COVID-19.

<b>Order Number</b>	<b>Order Name</b>	<b>Issuing Official</b>	<b>Authority Cited</b>	<b>Expiration Date Cited in Order</b>	<b>Current Status</b>
Emergency Order #20, signed April 3	Relating to modification of Emergency Order #16	Governor and DHS Secretary-designee	Wis. Const. art. V, s. 4; ss. 252.02 (6) and 323.12 (4); and EO #72	May 11 (duration of the public health emergency under EO #72, including any extensions)	Expired
Emergency Order #21, signed April 3	Relating to DHS administrative rule suspensions and order	Governor and DHS Secretary-designee	Wis. Const. art. V, s. 4; ss. 252.02 (6) and 323.12 (4); and EO #72	May 11 (duration of the public health emergency under EO #72)	Expired <sup>9</sup>
Emergency Order #22, signed April 9	Related to certain timelines established by DSPS	Governor	s. 323.12(4) and EO #72	May 11 (duration of public health emergency under EO #72)	Expired
Emergency Order #23, signed April 9	Related to DVA assistance to needy veterans program	Governor	s. 323.12(4)(b) and (d) and EO #72	May 11 (duration of the public health emergency under EO #72)	Expired <sup>10</sup>
Emergency Order #24, signed April 10	Relating to DOT emergency overweight commodity permits	Governor	s. 323.12(4)(b) and (d) and EO #72	May 11 (duration of the public health emergency under EO #72, or until a superseding order is issued)	Expired
Emergency Order #25, signed April 14	Additional safety measures related to DWD and migrant labor camps	DHS Secretary-designee	s. 252.02 and at Governor's direction	June 13 (60 days from date of the order)	Expired <sup>11</sup>
Emergency Order #26, signed April 13	Relating to DCF administrative rule suspensions	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72)	Expired <sup>12</sup>
Emergency Order #27, signed April 14	Related to joint effort marketing by the Department of Tourism	Governor	s. 323.12(4)(b) and (d) and EO #72	May 11 (duration of the public health emergency under EO #72)	Expired

<sup>9</sup> DHS has filed the following scope statements: [Scope Statement No. SS 050-20](#) for a proposed emergency rule relating to community-based residential facilities; [Scope Statement No. SS 051-20](#) for a proposed emergency rule relating to adult family homes; [Scope Statement No. SS 052-20](#) for a proposed emergency rule relating to emergency medical services licensure, certification, and staffing requirements; [Scope Statement No. SS 053-20](#) for a proposed emergency rule relating to certification of programs for training and testing nurse aides and feeding assistants; and [Scope Statement No. SS 054-20](#) for a proposed emergency rule relating to nursing home transfer requirements.

<sup>10</sup> DVA has promulgated [Emergency Rule 2012](#) relating to the Assistance to Needy Veterans Grants program.

<sup>11</sup> DWD has promulgated [Emergency Rule 2014](#) relating to COVID-19 protections for migrant workers.

<sup>12</sup> DCF has promulgated [Emergency Rule 2009](#) suspending and modifying various DCF rules due to COVID-19.

<b>Order Number</b>	<b>Order Name</b>	<b>Issuing Official</b>	<b>Authority Cited</b>	<b>Expiration Date Cited in Order</b>	<b>Current Status</b>
Emergency Order #28, signed April 16	Safer at home order	DHS Secretary-designee	s. 252.02 (3), (4), and (6)	8:00 a.m. on May 26	Invalidated <sup>13</sup>
Emergency Order #29, signed April 17	UW system administrative rule suspensions	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72)	Expired
Emergency Order #30, signed April 17	DNR administrative rule suspensions	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72)	Expired
Emergency Order #31, signed April 20	Badger Bounce Back	DHS Secretary-designee	s. 252.02 (3), (4), and (6)	Not specified	Not in effect <sup>14</sup>
Emergency Order #32, signed April 23	Relating to the operation of the alternative care facility	Governor and DHS Secretary-designee	ss. 252.02 (2) and 323.45	Remains in effect until DHS (in consultation of DOA, Army Corp. of Engineers leadership, and local health officials) determines that the ACF can safely be decommissioned	In effect <sup>15</sup>
Emergency Order #33, signed April 24	DOR administrative rule suspensions	Governor	s. 323.12(4) and EO #72	May 11 (duration of the public health emergency under EO #72)	Expired
Emergency Order #34, signed April 27	Interim order to turn the dial	DHS Secretary-designee	s. 252.02 (3), (4), and (6)	Remains in effect for the duration of the Safer at Home Order, which expires at 8:00 a.m. on May 26 under EMO #28	Not in effect <sup>16</sup>

<sup>13</sup> In *Wisconsin Legislature v. Palm*, 2020 WI 42, the Wisconsin Supreme Court invalidated EMO #28, effective May 13, 2020, except with respect to the order's provision closing schools. Specifically, the court held that EMO #28 constitutes a "rule" for purposes of ch. 227, Stats., and thus is invalid because it was not promulgated under the rulemaking procedures under that chapter.

<sup>14</sup> The status of EMO #31 is in question following the Wisconsin Supreme Court's decision *Wisconsin Legislature v. Palm*, 2020 WI 42, which invalidated EMO #28. Although EMO #31 does not explicitly rely on EMO #28 and was not specifically addressed in the Court's decision, it implicitly relies on EMO #28, and therefore is likely not in effect. Additionally, the decision may not apply to EMO #31 as it does not appear to independently prohibit any particular activity. If EMO #31 is viewed as merely a prospective plan rather than a set of legal requirements enforced by criminal penalties, then the holding in *Palm* might not apply to it.

<sup>15</sup> The validity of EMO #32 may be questioned following *Wisconsin Legislature v. Palm*, 2020 WI 42, which invalidated EMO #28. Although *Palm* did not address the validity of EMO #32, the decision provides support for a legal challenge to EMO #32.

<sup>16</sup> EMO #34 was effective for the duration of EMO #28 and its provisions generally modified EMO #28. Because EMO #28 was invalidated by *Wisconsin Legislature v. Palm*, 2020 WI 42, EMO #34 is no longer in effect.

<b>Order Number</b>	<b>Order Name</b>	<b>Issuing Official</b>	<b>Authority Cited</b>	<b>Expiration Date Cited in Order</b>	<b>Current Status</b>
Emergency Order #35, signed May 4	DHS and DSPS	Governor and DHS Secretary-designee	Wis. Const. art. V, s. 4; ss. 252.02 (6) and 323.12 (4) (b) and (d); and EO #72	May 11 (duration of the public health emergency under EO #72)	Expired <sup>17</sup>
Emergency Order #36, signed May 11	Interim order to turn the dial	DHS Secretary-designee	s. 252.02 (3), (4), and (6)	Remains in effect for the duration of the Safer at Home Order, which expires at 8:00 a.m. on May 26 under EMO #28	Not in effect <sup>18</sup>

This information memorandum was prepared by Amber Otis, Staff Attorney, on June 16, 2020.

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<sup>17</sup> DHS has filed [Scope Statement No. SS 039-20](#) for a proposed emergency rule relating to Medicaid eligibility requirements, [Scope Statement No. SS 048-20](#) for a proposed emergency rule relating to requirements for adult long-term care, [Scope Statement No. SS 049-20](#) for a proposed emergency rule relating to Medicaid benefits management, and [Scope Statement No. SS 060-20](#) for a proposed emergency rule relating to the Birth to 3 program.

<sup>18</sup> EMO #36 was effective for the duration of EMO #28 and its provisions generally modified EMO #28. Because EMO #28 was invalidated by *Wisconsin Legislature v. Palm*, 2020 WI 42, EMO #36 is no longer in effect.