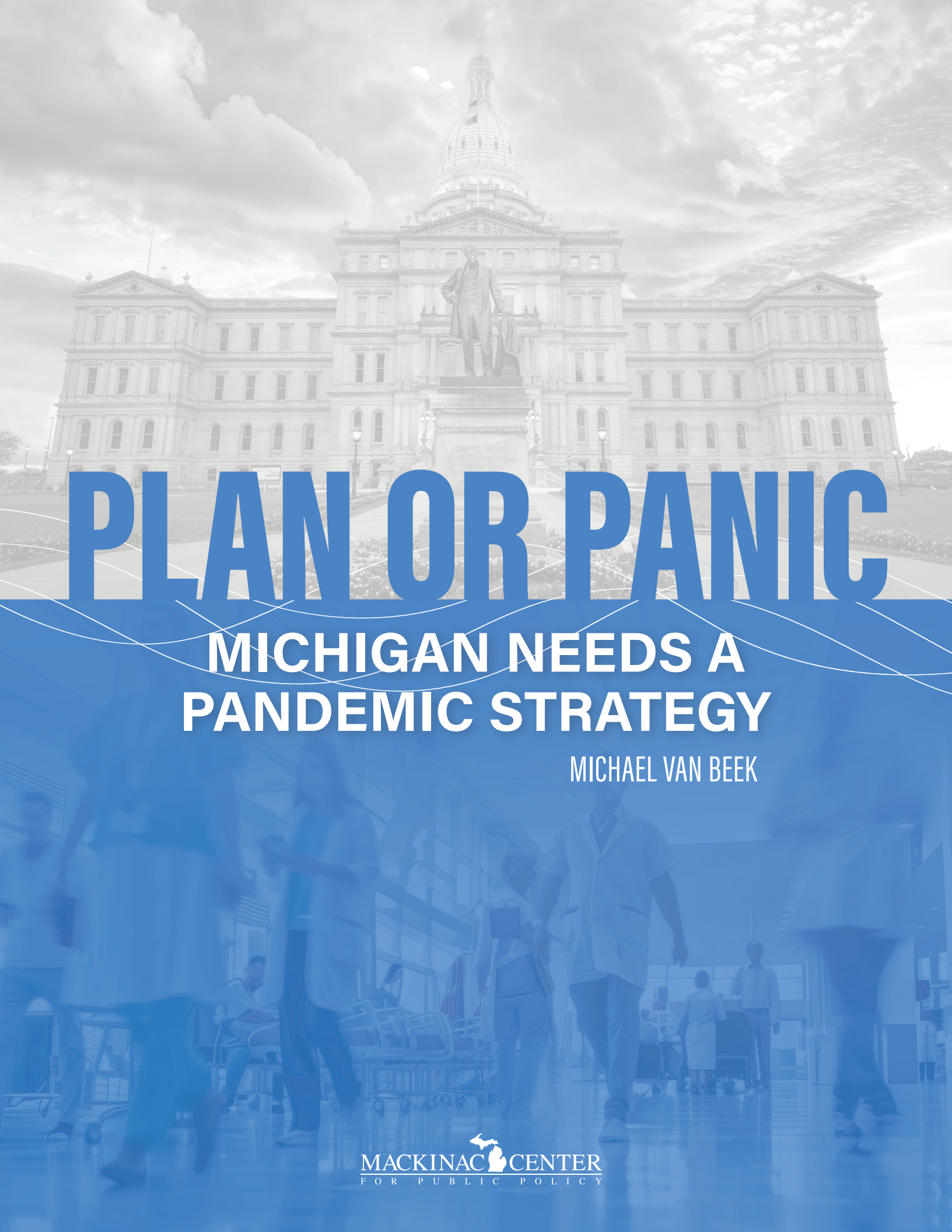

PLAN OR PANIC

MICHIGAN NEEDS A PANDEMIC STRATEGY

MICHAEL VAN BEEK

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The Mackinac Center for Public Policy

Plan or Panic?
Michigan needs a pandemic strategy

By Michael Van Beek

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Contents

Introduction

It's been five years since Gov. Gretchen Whitmer declared a state of emergency due to COVID-19. The governor's lockdown restricted Michigan residents' freedom to work, learn, travel, shop, worship, exercise and gather with friends and family. This unprecedented response created confusion and controversy, generating significant criticism.

The state's response was in constant flux. Whitmer was careful not to commit to any action until she publicly announced new orders. The next mandate was impossible to predict. After a while it became clear that the Whitmer administration was not following a plan but making up orders on the fly.

The state had official, prepared plans meant to be used for responding to pandemics. State law requires the health department to create these plans intended to guide officials in case of an influenza-like pandemic, precisely what COVID-19 presented in early 2020. The Whitmer administration appears to have simply thrown these plans out the window and decided to forge its own path. The governor has not yet explained why the existing strategy public health officials created was inadequate.

Making it up as you go is typically more challenging than executing a prepared plan. It is especially difficult when the decisions disrupt the daily routines of 10 million people. Following a plan creates predictability and reduces controversy. A planned response earns public trust, as it fosters predictability and accountability.

Michigan lacks a useful plan to deal with the next pandemic. The pages that follow explain how the current pandemic plan the state health department maintains is inadequate. It would result in an ad hoc response, much like the COVID-19 episode. Despite claiming to have learned lessons from that pandemic response, health officials appear ready to make the same mistakes all over again.

The Plan To Have No Plan

The Michigan Department of Health and Human Services released its latest pandemic response plan in July 2024. It is an annex to the health department's comprehensive Emergency Operations Plan. The stated goal of the pandemic plan is to "prevent, control, and mitigate the effects of influenza viruses that pose high-risk to human health." But it is difficult to know what will happen when it's time to put this plan into action, because the Whitmer administration disregarded the existing pandemic plan in place at the beginning of the COVID-19 emergency. When the next pandemic arrives, will state officials toss the plan aside as well?

The answer to that question is irrelevant because the state's current plan is no plan at all. It leaves all the important decisions about how to respond to a pandemic to the discretion of public health officials. The plan's vague and slippery language carefully avoids committing state officials to any particular policy. Decisions about when to activate emergency powers, what actions to take and for how long are left for government officials to decide in the heat of the moment. In other words, the state's plan is to let public health officials make up the rules as they go.

What is an emergency?

The state's current pandemic plan does not provide helpful guidance on what conditions justify emergency action. It does not define quantifiable thresholds or triggering events that could guide state officials in determining if emergency powers are necessary. Michigan's current pandemic plan fails to answer the most basic question: What is a pandemic emergency?

The plan lists some factors officials could use to determine if emergency action is needed to respond to an influenza-like pandemic. These include the number of hospital visits for influenza-like illness, test results, hospital capacity rates and school absences. But all it says is that emergency actions may be needed if there are "abnormal increases in disease activity." It provides no other guidance on when emergency powers should be invoked.

The plan provides no numerical thresholds or range of values that officials could use to guide their decision to take emergency action. Health officials will have to determine in real time what metrics to use and how much of an increase is large enough to trigger a response. The plan is silent about the importance of each factor officials might consider, perhaps suggesting that they should be weighed equally. The plan's lack of specificity means that state officials will have to determine how much each factor matters.

What should the state do?

The current pandemic plan is similarly nondescript in its guidance about social distancing and other lockdown policies. It refers to these as "community mitigation measures." It names some policies, including:

- "Social distancing (6> feet).
- Cancel mass gatherings of more than 10 people (e.g., school/daycare/university/church/concert/theater), as feasible.
- Implement teleworking for businesses.
- Restrict non-essential access to assisted living/nursing facility care centers.
- Limite [sic] unnecessary movement in the community/shelter-in-place.
- Shut-down non-essential medical activities.
- Cancel elective surgeries and non-essential medical procedures."

The plan provides no other guidance concerning lockdown policies. Presumably these are listed as examples of policies officials should consider, but it is difficult to know given the lack of detail. For instance, the Whitmer administration issued dozens of different social distancing mandates. Are those policies what the current plan recommends, or do they mean something different?

The plan is also silent about how to implement and enforce these policies. It says nothing about how long they should last. It steers clear of recommending anything too specific — choosing instead to leave these important decisions to the discretion of state health officials under the stress of managing an active pandemic response.

Another section of the plan claims to provide "specific actions to perform." But it tells officials only to "consider" and "assess" possible actions. It advises them to "consult" and "coordinate" with "partners and stakeholders," but it provides no specific instruction on what they should do. Public officials presumably can take any action they think is necessary after this assessing, considering, consulting and coordinating.

The plan carves out broad authority for the top state health officials to act unilaterally. One of the community mitigation measures states, "Consider if the situation warrants statewide action and determine the appropriate order(s) to be issued by the Director/Chief Medical Executive." The plan provides no other details. The result is that unelected health officials are left to decide for themselves if the situation requires statewide orders and what those orders

will be. This ad-hoc, unilateral approach means all the important policy questions are left for state officials to decide during the emergency.*

The plan gives officials full discretion to do whatever they want in other ways. It lists canceling mass gatherings, for example, as a potential mitigation measure. But it adds that this should be done only "as feasible." State officials can use this framing to support any decision they make about gatherings during an emergency, because they will be the ones determining when these actions are feasible.

The plan's executive summary promises it "will provide information on what actions need to be taken" to respond to a pandemic. This is followed by: "The more practical element of implementing the actions in this plan will be determined by [the state health department] leadership." The document's lack of specificity means that the "more practical element" includes all the important decisions about which mitigation measures to use and when.

The plan's overarching strategy is to leave the important pandemic response decisions to the discretion of public health officials to determine during an active emergency situation. They will have unilateral authority to determine what community mitigation measures the state will force on the public. This deviates from previous pandemic response strategies and calls into question the purpose of planning.

A planned experiment?

Michigan's current pandemic plan says it incorporates "lessons learned from the COVID-19 pandemic." It does not, however, describe any of these lessons or provide other information about state officials supposedly learned. The Whitmer administration has not thoroughly reviewed the state's response to COVID-19. The impact of the governor's mitigation strategy remains unknown. This deviates from the health department's current plan, which instructs officials to "[r]eview and evaluate the effectiveness of community mitigation measures implemented."

The state's response to COVID-19 turned out to be an experiment of unprecedented policies. It imposed novel mandates on the public, such as confining people to their homes under criminal penalty, directing healthy teenage athletes to get tested weekly, requiring restaurant patrons to divulge their contact information for tracking purposes and forcing children to breathe through masks for hours at a time. The impact of these and most of the other policies the Whitmer administration implemented remains unstudied to this day. To the extent the

* The state health director and chief medical executive are appointed by the governor. This means that the governor has the final say on when and how these emergency pandemic powers are used.

current plan incorporates policies from the state's COVID-19 response, it is recommending social experiments whose effects have not been fully assessed.

These untested policies were not recommended by previous pandemic plans. The 2024 plan's reference to a "shelter-in-place" policy is a good example. The term is not defined, but presumably it means something similar to the stay-at-home order Whitmer issued in 2020. The state's previous pandemic plans only recommend isolation and quarantine. These are less stringent measures: Isolation confines only sick people to their home, and quarantine requires only those exposed to someone sick to stay home.

The state's 2015 plan made clear that these policies "can and should be undertaken voluntarily." It did recognize the authority public officials have in Michigan law to force people to isolate and quarantine. But Whitmer's approach went even further, mandating that everyone, no matter their health status or exposure to the disease, to stay home under threat of criminal penalties.

The 2024 plan supports unprecedented lockdowns in other ways. It envisions dividing society and human activities into two broad categories: essential and nonessential. It references "non-essential access to assisted living/nursing facility care centers" and "unnecessary movement in the community." The Whitmer administration has yet to explain how it determined which activities were "necessary" and which ones were not during the COVID-19 emergency.

Whitmer made dozens of decisions along these lines that seemed to make little sense, such as opening casinos but not bowling alleys, bingo halls or movie theaters to operate. This strategy was one of the more controversial aspects of Michigan's response. People found their activities and work suddenly thrust into categories and subject to new government dictates. The current plan appears to endorse this strategy for future pandemics.

Lack of Evidence

Michigan's current pandemic plan deviates from previous ones published by public health officials. The most significant difference is that the current plan endorses Whitmer's lockdown policies. If state officials want to change the state's planned pandemic response and create new recommendations, they should provide ample evidence to support such changes. Public health officials in years past spent large amounts of time, not to mention taxpayer dollars, crafting their recommendations. These should not be so easily tossed aside.

Yet the state's current pandemic plan does just that. It fails to justify the experimental lockdown policies it recommends. In fact, it cites only one piece of evidence to support its recommended mitigation measures. Even that piece of evidence fails to support the actions Michigan's current pandemic plan endorses.

The single piece of evidence is a 2017 report from the U.S. Centers for Disease Control and Prevention, or CDC, titled "Community Mitigation Guidelines to Prevent Pandemic Influenza." That report is intended "to help state, tribal, local and territorial health departments with prepandemic planning and decision-making." Although the state's current plan cites that CDC report as supporting evidence, the two differ significantly in their recommendations.

CDC report provides no support for lockdowns

The 2017 CDC report does not use the term "shelter-in-place." It makes no reference to broadscale "lockdowns" or "stay-at-home orders." If Michigan's pandemic plan is correct and this report provides supporting evidence for its recommendations, that is not clear from a plain reading. In fact, the authors of the CDC report make no references to governments issuing society-wide lockdowns during an influenza pandemic.

In a table titled "Recommended nonpharmaceutical interventions for influenza pandemics, by setting and pandemic severity," the CDC authors list policies the agency "might recommend" for "very severe to extreme" pandemics. It does not list any lockdown-type measures. The most severe actions it proposes are isolation, quarantine and temporary school closures. The authors repeatedly emphasize that these policies should be voluntary.

This differs in two significant ways from the Whitmer administration lockdowns that are endorsed by Michigan's current pandemic plan. First, isolation and quarantine only apply in the CDC report to people who are sick or exposed to someone who is sick. Second, these policies are to be voluntary and not enforced by the police. Whitmer required everyone to obey her stay-at-home orders, healthy and sick, under threat of criminal penalties. Her administration later issued fines to employers for violating her mandates.

The CDC report does not recommend broad closures of businesses like those Whitmer ordered in 2020 and 2021. The state's current plan says to "implement teleworking for businesses," and it presumably means to allow officials to shut down businesses with a shelter-in-place order. The CDC report, on the other hand, recommends only using social distancing measures in workplaces, such as affording sick employees the ability to work from home and eliminating or reducing as much physical interaction between employees as possible. Industry-wide business closures are not mentioned.

A supplementary document to the 2017 CDC report does reference businesses closures in response to a pandemic. It says they are "less than ideal" and notes that staggered work schedules may be preferable as they are "easier to implement." Importantly, the authors of the supplementary report assume the decision of whether a workplace will close will be left to employers, not a politician or a public health official. It cautions that "there is no direct evidence for any specific [workplace social distancing] measure."

The state's concept of "mass gatherings" also deviates from the CDC report it cites. Michigan's plan recommends prohibiting "mass gatherings of more than 10 people." The CDC report, on the other hand, defines this term differently. It describes a mass gathering as "group events such as concerts, festivals, and sporting events [that] bring people into close contact for extended periods." One of the supplementary documents to the report defines the term: "A public event where a large number of people are gathered for a set amount of time."

The CDC report does not attach a number to the term, but it clearly differs from the way Michigan officials view mass gatherings. The state's plan would subject backyard barbecues to regulation by labeling them "mass gatherings." The CDC reserves use of the term for crowds of people numbering in the hundreds and thousands.

It is not hard to understand why the definition of a mass gathering matters to Michigan officials. State law permits the health director to "prohibit the gathering of people for any purpose" during a declared pandemic emergency. The term is not defined in statute. That means the health director gets to define it, and this determines what the director can regulate. The broader the definition, the more social interactions the director can control.

During the COVID-19 panic, the state's emergency epidemic orders defined a gathering as "any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space." This enabled the Whitmer administration to regulate virtually every public interaction among Michigan's 10 million residents. The CDC report, conversely, envisions state officials using this emergency power to regulate only large crowds, not the incidental interactions that occur among people during their daily routines nor activities done in small groups.

Another way Michigan's current lockdown strategy deviates from the CDC's recommendations is that it divides society into two categories: "essential" and "non-essential." For example, the current state plan recommends "limite [sic] unnecessary movement in the community." What qualifies as unnecessary movement will be left to the discretion of state officials.

The CDC report makes no reference to this concept. Only one of its two supplementary documents mentions anything resembling a similar decision-making framework. It lists "limiting or postponing non-essential business travel" as one measure that employers, not public officials, might consider implementing during a pandemic emergency. The Whitmer lockdown used this essential-nonessential dichotomy to prohibit whatever social activity officials felt was unnecessary. Public health officials still have not explained how they made these decisions.

Michigan's pandemic plan envisions using this categorization system to ration medical care during a pandemic emergency. It tells health officials to "shut-down non-essential medical activities" and "cancel elective surgeries and non-essential medical procedures." It also plans to "restrict non-essential access to assisted living/nursing facility care centers." The CDC report does not mention restricting access to nursing homes or similar facilities, nor does it mention shutting down any medical services. There is no support to be found in the 2017 CDC report for these draconian policies recommended by the state's current pandemic plan.

Differing school closure strategies

The 2017 CDC report recommends that public officials use "preemptive, coordinated school closures." It identifies three potential objectives from school closures. The first is to prevent viral transmission at the beginning of a pandemic, while the "initial assessment of transmissibility and clinical severity" of the virus is studied. These closures could last up to two weeks, according to the CDC authors. The second objective is also early in a pandemic and meant to help heath care providers prepare for the disease. Closures of this type can last up to six weeks. The final objective, which could close schools for up to six months, is to allow "time for pandemic vaccine production and distribution."

Michigan's pandemic plan makes no mention of these different objectives for school closures and does not provide any guidance on how long schools should be closed. That decision is left for health officials to make in the heat of a declared pandemic emergency.

The CDC report also warns against using a strategy the Whitmer administration deployed during the COVID-19 emergency. The CDC authors call this "reactive school closures and dismissals." It means making school closure decisions based on the estimated transmission rates of a virus in the local community. This is "unlikely to affect virus transmission because [school closures] typically take place after considerable, if not widespread, transmission has already occurred in the community."

Ironically, the report cites evidence from a study of 559 Michigan schools that temporarily closed in 2009 in response to an H1N1 virus. This "had little effect on community levels of influenza-like illness," the report concludes.

During 2020 and 2021, the Whitmer administration wavered back and forth about reopening schools to in-person instruction. The governor forced schools to close for the last three months of the 2019-2020 school year as the emergency began. Months later, Whitmer said that all schools would be open to in-person instruction in fall 2020. But just a few weeks later she suggested that schools may not be allowed to reopen after all. The governor eventually punted on this decision and left it to local health departments and school districts.* They in turn based their decisions on their reading of the risks presented by the transmission observed in their communities. This is the reactive approach that the CDC report warns against.

Michigan's current pandemic plan is silent about how long school closures might last, and it provides no other guidance than telling health officials to alert the public if they force schools to close. The CDC report repeatedly reminds readers that school closures should be temporary, lasting a few weeks at the beginning of mild-to-moderate pandemics and up to six months for an extreme pandemic.

More deviations: social distancing and masks

The CDC report undercuts the state's pandemic plan in other ways. Michigan's plan says that social distancing requires keeping people more than six feet away from each other. The 2017 CDC report considered only forcing people to distance themselves by "at least 3 feet."

Another discrepancy is the recommended use of masks. The state's pandemic plan does not mention mask mandates. This is strange because mask mandates became a central element of the state's response to COVID-19. Michigan's current plan only references masks in discussing potential challenges to supplying medical staff with enough personal protective equipment. Presumably the decision to force people to wear masks will be left to public officials.

It could be expected that Michigan officials would issue a mask mandate like the one the Whitmer administration used. But such a mandate would deviate from the recommendations of the 2017 CDC report.

* Whitmer reversed herself again later by issuing an order that forced all high schools to close for a few weeks in November 2020.

The CDC authors only recommend requiring people who are sick to wear masks and only in "crowded community settings" and only during the most severe pandemics. "Face mask use by well persons is not routinely needed in most situations to prevent acquiring the influenza virus," they note. The Whitmer administration required everyone, including children as young as two, to wear a mask everywhere, even outside.

The CDC report does not mention a broad mask mandate like the one the Whitmer administration issued. It lists the "feasibility of recommending face mask use by well persons in community settings" as one of the "areas for additional research."

Recency bias?

Michigan's current pandemic plan appears to suffer from a common reasoning fallacy known as recency bias. This is when more weight or significance is given to the most recent events or evidence. This tends to distort the case by preferring more recent evidence over the best evidence. This might help explain why Michigan public health officials seem to favor the Whitmer administration's unprecedented response over the more carefully considered and specific recommendations of the 2017 CDC report. This, of course, also allows health officials to avoid questioning or criticizing previous decisions made by the current governor.

The state's plan offers no new evidence for deviating from the CDC's 2017 recommendations. As such, it appears simply biased towards the policies that were tried most recently by Whitmer. The public deserve pandemic plans that include recommended policies that are demonstrated to be achievable, effective and appropriate.

A Useful Pandemic Plan

The state's current pandemic plan fails to provide public health officials with useful guidance for responding to a novel, influenza-like virus. A helpful plan would give specific advice on when to exercise emergency authority. It would clearly define the actions officials should consider. It would explain which measures are most appropriate at different phases of a pandemic. A useful plan would mark the boundaries officials should not cross and remind them of the trade-offs of trying to suppress viral transmission in a large population. It would stress the potential harms — the known social, economic and health costs of community mitigation measures.

A key feature of a good emergency strategy is a trigger. A trigger tells public officials when they should declare an emergency and exercise emergency authority. Triggers can incorporate several factors and types of information that could be used to determine when public officials

should declare an emergency. The state's current plan references a few data points officials should monitor, but it offers no other guidance about what conditions should trigger emergency powers.

In addition to guiding public officials about when to act, a useful pandemic plan would articulate the actions they should consider. This guidance should be much more specific than Michigan's current pandemic plan, which simply lists a few scantily described policies. It should provide an exhaustive list of actions available to public officials. These policies should be specific and clear. It should further instruct officials not to experiment with policies that are not part of the plan.

A helpful pandemic plan should articulate definite limits to both the scope and the duration of each possible emergency measure it lists. It should specify how long each mandate may persist. It should caution public officials from exceeding these limitations and remind them of the ramifications of doing so. A good pandemic plan might also list policies that officials should rule out using.

A well-written pandemic plan would allow Michigan residents to prepare for the impact the state's pandemic orders might have on them. This would provide peace of mind for some people of Michigan. The public health benefits of an orderly and predictable emergency process are difficult to estimate, but they are real. The COVID-19 response, by contrast, was impossible to predict. The rules were created in the heat of the moment. A clear, direct and specific plan would provide the public with some assurance about what is likely to happen next.

Why public health officials and politicians should embrace pandemic plans

Public health officials and politicians may feel opposed to the limits a pandemic response plan places on them. Some might think it hinders their ability to suppress the transmission of an influenza virus. Government leaders might want the latitude to mimic policies used in other countries or those clamored for in the media or online. It would not be a surprise, if during the next influenza panic, there is a push to reinstitute some of the common COVID-19 mandates. But public officials would benefit from having their choices limited to a predetermined list developed by cooler heads.

Public officials should remember the message repeated in the CDC's 2017 report: There is not good evidence to support most mitigation measures. That means it is very unlikely that health officials and politicians will come up with policies in the throes of the emergency that

are superior to what is included in a pandemic strategy plan. Officials should feel confident knowing that sticking to the plan means following the best evidence and advice available.

A plan that limits the actions of public health officials or politicians can shield them from claims of being influenced by partisan or other special interests during the emergency. Executing a prepared strategy for a predictable situation is the most neutral and fair way of responding to emergency conditions. Making the rules up on the fly requires an authoritarian and unilateral approach, which undermines the rule of law and representative government.

Following a plan also should protect public officials from responsibility for the pandemic's outcome. The impact on public health a pandemic might produce is beyond the control of a governor or state official, even one armed with emergency powers. This should be a lesson learned from COVID-19: Public officials should avoid the temptation to grab unilateral power and try to save the day. Instead, they should rely on a clearly defined response plan. Sticking to a plan might not be flashy, but it helps public officials avoid the common pitfalls associated with wielding emergency power. Officials should welcome this approach.

Conclusion

The state's current pandemic plan provides useful guidance to departments and agencies, as well as local health departments. It explains how to marshal government resources to respond to a pandemic. However, when it comes to lockdown policies — what it calls community mitigation measures — the plan fails to instruct public health officials about what they should do during a pandemic emergency.

Michigan's current pandemic response plan makes only passing references to a few insufficiently described policies that officials might consider. It offers no detailed guidance about when the state should act, what action to take and how long its mandates should last. The result is that the plan hands state officials full discretion to do anything they feel is best during the next pandemic emergency. This is largely what the Whitmer administration chose to do during the COVID-19 panic. It is not different from having no plan at all.

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