

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
ACTING SECRETARY DR. DAVID R. SCRASE, M.D.**

OCTOBER 25, 2020

**Amended Public Health Emergency Order Regarding Crisis Care and Establishing the
Credentialing and Approval of State Credentialed Physicians and Credentialed Advanced
Practice Clinicians in Response to Medical Staff Shortages**

ORDER

WHEREAS, COVID-19 has been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health (“NMDOH” or the “Department”) confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

WHEREAS, on March 11, 2020, because of the spread of COVID-19, Michelle Lujan Grisham, the Governor of the State of New Mexico, issued Executive Order 2020-004 declaring that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, the State issued a Public Health Order on December 9, 2020, activating Crisis Standards of Care in response to the overwhelming burden placed on medical institutions responding to the pandemic. Contemporaneously, the State also issued a Public Health Order temporarily limiting non-essential medical procedures to devote maximum resources towards intensive care units dealing with a surge in COVID-19 cases. These two Public Health Orders expired on January 5, 2021, and January 4, 2021, respectively;

WHEREAS, ongoing surges in COVID-19 cases and novel strains of the virus continue to stress the ability of both institutional and individual providers to deliver the quality of care New Mexicans ordinarily expect, thus causing an urgent medical crisis;

WHEREAS, the limitations posed on non-medically necessary procedures in the past and the hesitance of the general public to seek preventive and routine medical care during the pandemic has resulted in a significant subsequent increase in non-COVID related patients seeking medical care, forcing every acute care facility in the State to expand far beyond normal capacity;

WHEREAS, the State is now experiencing a drastic shortage in the number of acute care medical workers available as a result of high patient censuses, fatigue, and higher wages being offered in other states;

WHEREAS, nurses in the State have been carrying unprecedented patient loads for the duration of the pandemic, forcing some nurses to retire or move away from the profession;

WHEREAS, this shortage of medical professionals not only threatens the State’s immediate ability to respond to the pandemic, but also threatens medical care access in the State for many years to follow;

WHEREAS, the State is securing resources and funding from the Federal Emergency Management Agency to obtain contract nurses and other medical personnel to assist acute care hospitals throughout the State, but given that this personnel shortage is a national issue, few nurses and other medical professionals have been available to come to New Mexico;

WHEREAS, a host of modifications of normal medical practice will be necessitated to address the ongoing surge of both COVID-related and non-COVID related hospitalizations in the New Mexico and the attendant detrimental consequences to medical practice and medical service availability within the State;

WHEREAS, it is prudent and crucial to ensure that primary care and outpatient clinics throughout the state continue to operate to provide preventative and routine care to lower the number of inpatient hospitalizations caused by delays in care;

WHEREAS, on October 18, 2021, Governor Michelle Lujan Grisham issued Executive Order 2021-059 ("EO 2021-059"), recognizing that crisis care standards may need to be implemented due to the shortage of acute care medical providers;

WHEREAS, EO 2021-059 orders and directs the New Mexico Department of Health to undertake all steps necessary to credential and approve certain physicians and other licensed healthcare providers as "Credentialed Physicians" and certain advance practice clinicians as "Credentialed Advanced Practice Clinicians" so that such individuals shall be considered public employees for purposes of the Tort Claims Act under the All Hazards Emergency Response Act;

WHEREAS, the Department of Health finds that it is necessary and appropriate under the current circumstances for certain physicians and other medical clinicians who evidence the meeting of certain qualifications to become approved to perform certain medical duties by the Cabinet Secretary and to become credentialed for the purpose of being deemed public employees for purposes of the New Mexico Tort Claims Act.

WHEREAS, on October 15, 2021, the New Mexico Medical Advisory Team notified the Secretary of Health that acute care medical staffing conditions for the possible implementation of "Crisis Care Standards" are present within the State and that it is appropriate to apply Crisis Care Standards in hospital settings; and on October 18, 2021, the Department adopted a Public Health Emergency Order regarding crisis care and establishing in response to medical staff shortages;

WHEREAS, the Department, in consultation with the New Mexico Medical Advisory Team, created, and subsequently revised, a Statewide Acute Care Medical Surge Plan to provide acute care hospital facilities with specific guidance on applying crisis standards of care and allocating scarce resources; and

WHEREAS, during a declared Public Health Emergency, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Emergency Response Act to "utilize, secure or evacuate health care facilities for public use." NMSA 1978, § 12-10A-6(A)(I). The Department of Health also possesses the legal authority under the Public Health Act to "respond to public health emergencies," "ensure the quality and accessibility of health care services and the provision of health care when health care is otherwise unavailable," "control and abate the causes of disease, especially epidemics," and "maintain and enforce rules for the control of conditions of public health importance." NMSA 1978, § 24-1-3.

NOW, THEREFORE, I, David R. Scrase, M.D., Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to Executive Order 2021-059 under the full scope of her emergency powers under the All Hazard Emergency Management Act and the Emergency Licensing Act, do hereby **DECLARE** that it is necessary for the State to recognize that conditions requiring the potential implementation of crisis-level standards of care are present, and hereby **ORDER** and **DIRECT** as follows:

1. Acute care hospital facilities shall comply with the "New Mexico Statewide Acute Care Medical Surge Plan for COVID-19 Pandemic Response," and any subsequent revisions made thereto, which is hereby incorporated by reference.
2. Prior to the implementation and application of any crisis care plans or standards, an acute care hospital facility must first (1) temporarily suspend any non-medically necessary procedures taking place within the facility, and (2) maintain compliance with all licensure requirements prescribed by NMDOH and Centers for Medicare and Medicaid Services ("CMS"). The Department shall provide information and training to acute care facilities regarding the effect of implementing crisis standards of care and the process for requesting any necessary licensure waivers from CMS.

3. For purposes of this Order, “medically necessary procedures” include those services which cannot be delayed without undue risk to the patient’s health, as determined by a qualified medical professional. Examples of criteria to consider in distinguishing between medical necessary and non-medically necessary procedures include: (a) threat to a patient’s life; (b) threat of permanent dysfunction of an extremity, including teeth, jaws and eyes; (c) risk of metastasis or progression of staging; (d) prenatal and postnatal care; and (e) any other factors that will conserve medical resources without creating undue risk of permanent harm to patients.

4. This Order’s guidance on medically necessary procedures is not meant to apply to (a) the provision of emergency medical care or any actions necessary to provide treatment to patients with emergency or urgent medical needs; and (b) any surgery that if not performed would result in a serious condition of a patient worsening (e.g., removing a cancerous tumor or a surgery intended to manage an infection).

I FURTHER DIRECT that the credentialing and approval of providers credentialed under this Order shall be conducted as follows:

1. **Definitions**

As used in this Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(a) "Applicant" means a natural person who is licensed as a medical practitioner and who applies for credentialing and approval as a Credentialed Physician or an Advanced Practice Clinician.

(b) "Application" means an application for credentialing and approval of a person to be a Credentialed Physician or Advanced Practice Clinician, that is completed utilizing the Department-approved application form.

(c) "Application form" means the form available online at www.nmhealth.org.

(d) "Credentialed Advanced Practice Clinician" means a natural person who is licensed as a healthcare provider, who is credentialed and approved by the New Mexico Department of Health for the purpose of deeming the person to be a public employee pursuant to the Emergency Licensing Act and the New Mexico Tort Claims Act. Credentialed Advanced Practice Clinicians are limited to the following:

(i) certified nurse practitioners (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.2);

(ii) certified registered nurse anesthetists (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.3);

(iii) clinical nurse specialists (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.4); and

(iv) certified nurse-midwives (licensed by the New Mexico Board of Nursing pursuant to the Nursing Practice Act and licensed by the Department of Health as a certified nurse-midwife pursuant to NMSA 1978, § 24-1-3(R) and NMAC 16.11.2).

(e) "Credentialed Physician" means a medical doctor or doctor of osteopathic medicine who holds authority under New Mexico law to provide medical care, who is credentialed and approved by the New Mexico Department of Health for the purpose of deeming the person to be a public employee pursuant to the Emergency Licensing Act and the New Mexico Tort Claims Act.

(f) "Credentialed Practitioner" means a Credentialed Physician or an Advanced Practice Clinician.

(g) "Facility" means the acute care hospital facility or institution at which an applicant intends to provide medical services, whether for consideration or on a voluntary basis.

(h) "Licensed" means licensed, certified, or permitted to provide medical care to a person by an authorized governmental licensing authority in the State of New Mexico.

(i) "Triage Officer" or "Triage Board Member" means a Credentialed Physician at an acute care hospital facility who is approved by and receives training from the Department of Health, and who exercises triage decisions affected by critical staffing levels and scarce resources caused by or resulting from the COVID-19 pandemic.

2. **Designation of Credentialed Practitioners; Effect**

The Secretary of Health shall designate a physician as a Credentialed Physician, or a clinician as a Credentialed Advanced Practice Clinician, based upon findings that: (1) the physician/advanced practice clinician services will materially further the State's interest in public health and welfare, and (2) the physician/advanced practice clinician possesses the requisite skills and background necessary to provide care during the pendency of the existing health emergency. The Secretary may weigh and consider any additional factors the Secretary deems appropriate given the operative facts and circumstances. The Secretary shall implement an application process, as more set forth more fully herein, for the purpose of identifying eligible medical practitioners and assessing their scopes of current practice and clinical services proposed for approval by the Department.

Credentialed Physicians and Credentialed Advanced Practice Clinicians shall only be considered public employees for purposes of the Tort Claims Act to the limited extent and in the limited circumstance in which such Credentialed Practitioners provide medical care outside of their normal and privileged scope of practice, and/or are serving as a triage officer or triage board member, in a hospital acute care setting. NMSA 1978, §§ 41-4-1 to -27; NMSA 1978, §§ 12-10-4, -11, -13.

(a) **Application Process**

An applicant or a facility affiliated with an applicant shall submit a completed application to the e-mail address that is identified on the application form. The Secretary or his or her designee(s) shall review the application and render a determination of whether to grant or deny the application in whole or in part based on operative facts and circumstances, including, but not limited to: the nature of the applicant's current primary scope of medical practice, the nature of the applicant's proposed scope of practice, the extent of deviation between the applicant's primary scope of practice and proposed scope of practice, and other factors as the Secretary may deem appropriate.

(b) **Content of Application**

The information required to be submitted in the application shall include, but need not be limited to, the following:

1. Identity and contact information of the applicant;
2. Professional qualifications of the applicant, including the applicant's professional degree;
3. Main location of the facility;
4. Main scope of current practice;
5. Proposed practice locations, including name and contact information for associated facilities;
6. Proposed scope of clinical services;
7. Request for designation as a Credentialed Physician or Credentialed Advanced Practice Clinician;
8. Name and signature of applicant; and
9. Proof of: agreement between the applicant and the associated facility, that the facility is willing to permit the performance of the identified proposed clinical services on the facility's premises, and that the applicant is willing to perform such services.

(c) **Disclaimer**

The Secretary or his or her designee may rescind approval of an application upon notice to an affected applicant and associated facility for cause, which includes, but is not limited to, falsification of any information included within the application or any other information or material submitted to the Department. A previously issued approval of an application shall be deemed automatically rescinded upon the suspension or revocation of an applicant's medical license by the applicant's professional licensing authority.

A Credentialed Practitioner and an associated facility shall at all times adhere to applicable ethical standards. All Credentialed Practitioners shall complete mandatory trainings provided by the Department prior to engaging or applying the standards referenced in the New Mexico Statewide Acute Care Medical Surge Plan for COVID-19 Pandemic Response.

I FURTHER DIRECT as follows:

1. This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.
2. This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health

Act.

3. This Order shall take effect on October 25, 2021 and remain in effect through November 17, 2021.

THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect for the duration indicated in the Order unless otherwise rescinded.

ATTEST:

/ S /
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 25TH DAY OF OCTOBER 2021

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

/ S /
DAVID R. SCRASE, M.D.
ACTING SECRETARY OF THE STATE OF NEW
MEXICO DEPARTMENT OF HEALTH