

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

December 2, 2021

Amended Public Health Emergency Order Requiring All School Workers Comply with Certain Health Requirements and Requiring Congregate Care Facility Workers, Hospital Workers, and Employees of the Office of the Governor Be Fully Vaccinated

WHEREAS, on January 30, 2020, the World Health Organization announced the emergence of a novel Coronavirus Disease 2019 ("COVID-19") that had not previously circulated in humans, but has been found to have adopted to humans such that it is contagious and easily spread from one person to another and one country to another;

WHEREAS, COVID-19 has been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health 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, Governor Michelle Lujan Grisham 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, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through December 17, 2021;

WHEREAS, over 48 million people have been infected with COVID-19 in the United States, with over 770,000 related deaths, and the New Mexico Department of Health has reported 314,000 positive COVID-19 cases and 5,369 related deaths in New Mexico;

WHEREAS, the currently available COVID-19 vaccines are safe and the most effective way of preventing infection, serious illness, and death;

WHEREAS, widespread vaccination protects New Mexico's health care system as vaccines decrease the need for emergency services and hospitalization;

WHEREAS, the refusal to receive the COVID-19 vaccine not only endangers the individual but the entire community, and further jeopardizes the progress the State has made against the pandemic by allowing the virus to transmit more freely and mutate into more transmissible or deadly variants;

WHEREAS, one such highly transmissible variant, B.1.617.2, commonly known as the Delta variant, now accounts for the majority of new infections in the United States;

WHEREAS, new scientific data demonstrates waning immunity after six months after the primary series of the Pfizer-BioNTech and Moderna vaccines and two months after the Johnson & Johnson's Janssen vaccine, and those with a booster vaccine have reduced risk for a breakthrough infection;

WHEREAS, New Mexico has recorded a significant increase in new COVID-19 cases in recent weeks, with cases expected to rise even further in the Fall and Winter months;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, and wellbeing of children who are not yet eligible to receive a vaccine; persons who cannot be vaccinated due to medical reasons; immunocompromised individuals; and vulnerable persons including persons in hospitals, long-term care facilities, and other congregate care facilities;

WHEREAS, the Food and Drug Administration (FDA) has approved every adult for a booster dose six months after the completion of the individual's primary series of vaccination with Pfizer-BioNTech and Moderna vaccines or two months after the completion of the individual's primary series of vaccination with Johnson & Johnson's Janssen vaccine, and the Centers for Disease Control and Prevention (CDC) has stated recently that all adults 18 and over should receive a booster vaccine;

WHEREAS, it is of critical importance to ensure that workers in hospitals, long-term care facilities, and other congregate care facilities receive booster doses of COVID-19 vaccine, if eligible, to fight rising rates of spread in these situations; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to maintain and enforce rules for the control of a condition of public health importance, and issue rules for immunization against conditions of public health importance.

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 the full scope of emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A), and hereby **ORDER** and **DIRECT** as follows:

DEFINITIONS

For the purposes of this Order, the following term shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Congregate care facility" means nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, State correctional facilities, juvenile justice facilities, residential treatment centers, the New Mexico State Veterans' Home, and community homes.

(2) "Congregate care facility worker" means any paid or unpaid individuals working in a congregate care facility. This includes workers providing services who have the potential for direct or indirect exposure to patients or residents in a congregate care facility. A congregate care facility worker includes contractors who perform services on-site at the congregate care facility.

(3) "Fully vaccinated" means two weeks after an individual completed the entire recommended series of vaccination with a vaccine approved by the Food and Drug Administration (FDA), including on an emergency use basis, to prevent COVID-19. An individual will be fully vaccinated two weeks after the second dose of the Pfizer-BioNTech or Moderna COVID-19 vaccines. An individual will be fully vaccinated two weeks after a single-dose Johnson and Johnson's Janssen COVID-19 vaccine.

(4) "Hospital" means any public hospital, profit or nonprofit private hospital, general hospital, or special hospital.

(5) "Hospital Worker" means all paid and unpaid individuals who work on-site in a hospital in a setting where care is provided to patients or patients have access for any purpose. This includes workers who have the potential for direct or indirect exposure to patients or COVID-19 airborne aerosols. Hospital workers include, but are not limited to, nurses, physicians nursing assistants, technicians, therapists, phlebotomists, pharmacists, students and trainees, contractual staff not employed by the hospital, and persons not directly involved in patient care, but who could be exposed to infection agents that can be transmitted in the hospital (e.g. clerical, dietary, environmental services, laundry, security, and volunteer personnel).

(6) "School worker" means all paid and unpaid adults serving in a private school, public school, or charter school.

(7) "Partially vaccinated" means an individual who has started, but not completed, their primary series of vaccination.

(8) "Primary series of vaccinations" means the first and second doses of the Pfizer-BioNTech and Moderna COVID-19 vaccines or the first dose of the Johnson & Johnson's Janssen COVID-19 vaccine.

(9) "Qualifying medical condition" means a permanent or temporary medical condition recognized by the FDA or Centers for Disease Control and Prevention (CDC) as a contra-indication to COVID-19 vaccination.

DIRECTIVES

I HEREBY DIRECT AS FOLLOWS:

(1) All school workers in any private school, public school, or charter school who (i) are not fully vaccinated against COVID-19; (ii) have not received a booster dose, if eligible according to the FDA, by January 17, 2022, or within four weeks of becoming eligible; and/or (iii) are unwilling to provide proof of such vaccination to their respective supervisors shall:

a. Provide adequate proof that the school worker has tested negative for COVID-19 on a weekly basis; and

b. Wear a mask or multilayer cloth face covering at all times indoors during the course and scope of their employment except when eating or drinking. An unvaccinated school worker will only be exempt from wearing a mask indoors if adequate proof is provided that the school worker has been instructed otherwise by a licensed healthcare provider.

(2) All private schools, public schools, and charter schools shall maintain records of school worker vaccination status in accordance with applicable privacy laws and regulations. The records regarding a worker's vaccination status shall be provided to the Department of Health promptly upon request.

(3) All hospital workers, congregate care facility workers, and employees of the Office of the Governor Michelle Lujan Grisham are required to be fully vaccinated against COVID-19 unless they qualify for an exemption. Further, all such individuals are required to receive a booster dose of the vaccine, if eligible according to the FDA, unless they qualify for an exemption. If an individual does not qualify for an exemption, the individual shall:

- a. Receive their primary series of vaccination by October 6, 2021, and if eligible, receive a booster dose no later than January 17, 2022, or within four weeks of becoming eligible; and
- b. Provide proof of vaccination to the appropriate person or supervisor:
 - i. Hospital workers and congregate care facility workers shall provide proof of vaccination or exemption to their respective supervisors.
 - ii. Contractors who are hospital workers shall provide proof of vaccination to the operator of the hospital in which the contractor provides on-site services.
 - iii. Employees of the Office of Governor Michelle Lujan Grisham shall provide proof of vaccination to the Chief Operations Officer.

(4) The workers subject to Section (3) of this Order may be exempt from the COVID- 19 vaccination requirement set forth above if they have a qualifying medical condition which immunization would endanger their health, or they are entitled under the Americans With Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), or any other applicable law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation. Nothing in this Order precludes the entities which employ or contract with these workers from providing disability-related reasonable accommodations and religious accommodations to the requirements of this Order as required by law.

- a. To be eligible for an exemption due a qualifying medical condition, the individual must provide their employer or operator of the facility they contract with a statement from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual qualifies for the exemption and indicating the probable duration of the individual's inability to receive the vaccine;
- b. To be eligible for an exemption due to a disability, the individual must provide their employer or the operator of the hospital or congregate care facility they contract with accommodation documentation from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual has a disability that necessitates an accommodation and the probable duration of the individual's inability to receive the vaccine; or
- c. To be eligible for an exemption due to a sincerely held religious belief, the individual must document that the request for an accommodation has been made and provide their employer or the operator of the facility they contract with a statement regarding the manner in which the administration of a COVID-19 vaccine conflicts with the religious observance, practice, or belief of the individual.

(5) If an operator of a hospital, operator of a congregate care facility, or the Office of Governor Michelle Lujan Grisham determines a worker to have met the requirements of an exemption pursuant to Section (4), the unvaccinated exempt worker shall:

- a. Provide adequate proof that the individual has tested negative for COVID- 19 on a weekly basis; and
- b. Wear a mask or multilayer cloth face covering at all times indoors at the hospital or congregate care facility except when eating or drinking. An unvaccinated worker will only be exempt from wearing a mask indoors if adequate proof is provided that the individual has been instructed otherwise by a licensed healthcare provider.

(6) The operator of a hospital, operator of a congregate care facility, and the Office of Governor Michelle Lujan Grisham shall maintain records of all workers' vaccination or exemption status in accordance with applicable privacy laws and regulations. If a worker is exempt pursuant to Section (4), then the operator or employer also must maintain records of the worker's testing results pursuant to Section (5). The operator of a hospital is required to report to the Department of Health the total number of (i) workers who are subject to

this Order, (ii) fully vaccinated workers, (iii) fully vaccinated workers who have received a booster dose; (iv) fully vaccinated workers who are eligible for, but have not yet received, a booster dose; (v) partially vaccinated workers, (vi) unvaccinated workers, (vii) unvaccinated workers who have been granted an exemption from the COVID-19 vaccination requirement. The number of hospital workers shall be submitted to the Department of Health's Hospital Reporting Portal (<https://nm.readyop.com/fs/4cjm/d866>) monthly or at an interval to be determined by the Department. The operator of a congregate care facility shall provide the Department of Health records regarding a worker's vaccination or exemption status promptly upon request.

(7) Hospital workers, congregate care facility workers, and employees of the Office of the Governor Michelle Lujan Grisham shall provide proof of vaccination or records of their exemption status to the Department of Health, if requested.

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) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(3) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Public Education Department and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(4) Any person, hospital, or congregate care facility who willfully violates this Order may be subject to civil administrative penalties available at law.

(5) This Order shall take effect on December 2, 2021 and remain in effect for the duration of the public health emergency first declared in Executive Order 2020-004 and any subsequent renewals of that public health emergency declaration, unless otherwise rescinded.

ATTEST:

/ S /
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 2ND DAY OF DECEMBER 2021

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

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