

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
SECRETARY TRACIE C. COLLINS, M.D.**

APRIL 28, 2021

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose County-by-County Restrictions Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 ("COVID-19"). Continued social distancing and self-isolation measures are necessary to protect public health given the devastating effects that are now resulting from the rapid increase in COVID-19 cases in New Mexico. It remains the core purpose of this Order to emphasize that all New Mexicans should be staying in their homes for all but the most essential activities and services. When New Mexicans are not in their homes, they must strictly adhere to social distancing protocols and wear face coverings to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.
2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:
 - A. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19;
 - B. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID-19 Test Results to the New Mexico Epidemiology and Response Division;
 - C. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;
 - D. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19; and
 - E. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine.
3. The April 23, 2021 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose County-by-County Restrictions Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared 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 April 30, 2021;

WHEREAS, confirmed cases in the United States have risen to more than 32.2 million and confirmed COVID-19 infections in New Mexico have risen to over 197,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 572,000 Americans and over 4,029 New Mexicans;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, vaccination, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; 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 adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Tracie C. Collins, M.D., 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 her 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) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

DEFINITIONS

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

(1) "Bars and clubs" means any business, other than those specifically defined as a "food and drink establishment," that typically or actually generates more than half of its revenue from the sale of alcohol for on-premises consumption, as well as adult entertainment venues, nightclubs, and dance clubs, regardless of the source of their revenue.

(2) "Close-contact businesses" include barbershops, hair salons, tattoo parlors, nail salons, spas, massage therapy services, esthetician clinics, and tanning salons.

(3) "COVID-Safe Practices" ("CSPs") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers." This document may be obtained at the following link <https://cv.nmhealth.org/covidsafe-practices/>.

(4) "Essential business" means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate more than one-third of their revenue from the sale

of canned food, dry goods, fresh fruits and vegetables, pet food, animal feed or supplies, fresh meats, fish, and poultry, and any other consumable food and drink products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, self-storage facilities, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

g. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

h. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, daycare, or boarding services;

j. Media services;

k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Crematoriums, funeral homes, and cemeteries;

p. Banks, credit unions, insurance providers, licensed check cashing businesses, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods, or services directly to residences, retailers, government institutions, or essential businesses.

(5) "Food and drink establishments" include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, "breweries" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-26.1; "distillers" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1; and "wineries" are those businesses licensed pursuant to NMSA 1978, Section 60-A-11.

(6) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(7) "Large entertainment venues" mean any publicly or privately owned venue typically or actually used to host large audiences for the purposes of entertainment or amusement, including, but not limited to: convention centers, concert venues, movie theaters, performance venues, professional or semi-professional sports venues, racetracks, and theaters.

(8) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, funeral, or any other grouping that brings together a specified number of individuals in a single room or connected space, confined outdoor space, or open outdoor space. "Mass gathering" does not include the presence of any number of individuals where those individuals regularly reside or individuals who are public officials or public employees in the course and scope of their employment.

(9) "Maximum capacity" means the maximum number of individuals allowed within a specified location, as determined by the relevant fire marshal or fire department. If the relevant fire marshal or fire department does not make such a determination, maximum capacity shall be determined by dividing the total square footage of floor space unoccupied by obstructions such as equipment and displays by thirty-six (36).

(10) "Places of lodging" means hotels, motels, RV parks, and short-term vacation rentals.

(11) "Recreational facilities" means any publicly or privately owned facility typically or actually used for recreational activities capable of bringing persons within close proximity of one another, including, but not limited to: aquariums, amusement parks, arcades, basketball courts, baseball fields, bowling alleys, botanical gardens, family entertainment centers, football fields, gokart courses, golf courses, guided raft and balloon tours, ice-skating rinks, museums with interactive displays or exhibits, miniature golf courses, ski areas, soccer fields, swimming pools, tennis courts, trampoline parks, youth programs, and zoos.

(12) "Retail space" means any business that regularly sells goods or services directly to consumers or end-users at the business location and includes, but is not limited to, the following "essential businesses" identified in the categories above: (1)d, (1)k, (1)m, and (1)n.

THE "RED TO GREEN" FRAMEWORK

I DIRECT that the State shall continue to reopen according to the following county-by-county framework:

SUMMARY

This Order sets out the "Red to Green" framework, which includes four levels of operations that are based on a county's ability to satisfy specified metrics: Turquoise Level, Green Level, Yellow Level, and Red Level. The Department of Health maintains the official map displaying each county's current level at: <https://cvprovider.nmhealth.org/public-dashboard.html>. The Department of Health updates this map every other Wednesday. A county shall remain at a given operating level so long as it continues to satisfy the specified metrics for that level. If a county fails to meet the specified metrics for a given level, the county must begin operating at the lower level's restrictions within 48 hours of the map's update. If a county begins meeting the specified metrics for a less restrictive level, the county may begin operating at that level's restrictions immediately upon the map's update. Notwithstanding the foregoing, counties which have reached Turquoise Level may operate at that level's restrictions for a minimum of four weeks, and their map status shall only be updated once every four-week period.

REOPENING LEVEL METRICS

Counties shall be categorized according to one of the following levels:

(1) Turquoise Level – Counties seeking to operate at this level must satisfy ALL of the following metrics for the most recent 14-day reporting period or TWO of the metrics for the TWO previous 14-day reporting periods:

(a) A new COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and

(c) A percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.

(2) Green Level -Counties seeking to operate at this level must satisfy TWO of the following metrics for the most recent 14-day reporting period:

(a) A new COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and

(c) A percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.

(3) Yellow Level - Counties seeking to operate at this level must meet ONE of the following metrics for the most recent 14-day reporting period:

(a) A new COVID-19 case incidence rate of no greater than 10 cases per 100,000 inhabitants during the most recent 14-day period;

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 7.5%; and

(c) A percentage of total vaccine-eligible residents fully vaccinated greater than or equal to 35% beginning on the date of this Order, 40% beginning the week of May 3, 2021, and increased by 5% every other week thereafter.

(4) Red Level -All other counties shall operate at the Red Level.

REQUIREMENTS FOR EACH LEVEL

Turquoise Level - Turquoise Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than one hundred fifty (150) individuals are prohibited.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

a. All "essential businesses," excluding those defined as a "retail space," may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate up to 75% of the maximum capacity of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

c. "Houses of worship" may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 75% capacity.

d. "Large entertainment venues" may operate up to 33% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises.

e. "Recreational facilities" may operate up to 50% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises.

f. "Bars and clubs" may operate up to 33% of the maximum capacity of any enclosed space on the premises and up to 75% capacity of any outdoor space on the premises. "Bars and clubs" shall comply with all other requirements applicable to "food and drink establishments."

g. "Food and drink establishments" may not provide indoor dine-in service, except those restaurants that have completed the NM Safe Certified training program. All "food and drink establishments" that have completed the NM Safe Certified offered at <https://nmsafecertified.org>, and also comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 75% of the maximum capacity of any outdoor seating area. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

h. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 100% of maximum occupancy. All other "places of lodging" shall not operate at more than 50% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed fifteen (15) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. Any entity not identified above may operate up to 75% of the maximum capacity of any enclosed space on the premises and up to 100% capacity of any outdoor space on the premises.

Green Level - Green Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than twenty (20) individuals are prohibited.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

- a. All "essential businesses," excluding those defined as a "retail space," may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.
- b. "Essential businesses" identified as a "retail space" may operate up to 50% of the maximum capacity of any outdoor or enclosed space on the premises.
- c. "Houses of worship" may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 50% capacity.
- d. "Large entertainment venues" may operate up to 25% of the maximum capacity of any enclosed space on the premises and up to 50% capacity of any outdoor space on the premises.
- e. "Recreational facilities" may operate up to 25% of the maximum capacity of any enclosed space on the premises and up to 50% capacity of any outdoor space on the premises.
- f. "Bars and clubs" may operate up to 25% capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. "Bars and clubs" shall comply with all other requirements applicable to "food and drink establishments."
- g. "Food and drink establishments" may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All "food and drink establishments" that have completed the NM Safe Certified offered at <https://nmsafecertified.org>, and also comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 50% of the maximum capacity of any enclosed space on the premises. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.
- h. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 75% of maximum occupancy. All other "places of lodging" shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.
- i. Any entity not identified above may operate up to 50% of the maximum capacity of any outdoor or enclosed space on the premises.

Yellow Level - Yellow Level counties are subject to the following requirements:

- (1) Except as provided in the following paragraph, all "mass gatherings" of more than ten (10) individuals are prohibited.
- (2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:
 - a. All "essential businesses," excluding those defined as a "retail space," may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.
 - b. "Essential businesses" identified as a "retail space" may operate up to 33% of the maximum capacity of any outdoor or enclosed space on the premises.
 - c. "Houses of worship" may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services up to 33% capacity.
 - d. "Large entertainment venues" may operate up to 25% of the maximum capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the venue except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the

indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, "large entertainment venues" may operate up to 25% of the maximum capacity of any enclosed space on the premises for the limited purposes of recording and broadcasting entertainment, but shall in no event permit any live, in-person audience.

e. "Recreational facilities" may operate up to 33% of the maximum capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, pools may operate up to 33% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.

f. "Bars and clubs" may not operate.

g. "Food and drink establishments" may not provide dine-in service unless they complete the NM Safe Certified training offered at <https://nmsafecertified.org>, as well as comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks. Those "food and drink establishments" that complete the NM Safe Certified training and comply with all attendant requirements mandated by that program may operate up to 33% of the maximum capacity of any enclosed space on the premises. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may operate up to 75% of the maximum capacity of any outdoor seating area. In all instances, tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. Any "food and drink establishment" that is permitted to serve alcohol must close for in person service by 10:00 p.m. and must remain closed until at least 4:00 a.m., but may continue to provide delivery service so long as customers are permitted on the premises. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

h. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 60% of maximum occupancy. All other "places of lodging" shall not operate at more than 33% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. "Close-contact businesses" may operate but may not exceed the lesser of 33% of the maximum capacity of any outdoor or enclosed space on the premises or twenty (20) customers inside the building at any given time.

j. Any entity not identified above may operate but may operate up to 33% of the maximum capacity of any enclosed space on the premises.

Red Level -Red Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all "mass gatherings" of more than five (5) individuals are prohibited.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following capacity limits and restrictions:

a. All "essential businesses," excluding those defined as a "retail space," may operate without capacity limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate up to 25% of the maximum capacity of any outdoor or enclosed space on the premises.

c. "Houses of worship" may hold religious services up to 100% of the maximum capacity of any outdoor or enclosed space on the premises but are strongly encouraged to limit indoor services to 25% capacity.

d. "Large entertainment venues" may not operate.

e. "Recreational facilities" may operate up to 25% of the maximum capacity of any outdoor space on the premises but shall not permit patrons to enter any indoor portion of the facility except for

the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the facility only to the extent necessary to operate the outdoor portion. Notwithstanding the foregoing, amusement parks may not operate. Further, pools may operate up to 25% of the maximum capacity of any enclosed space on the premises so long as they are only used for physical therapy and socially distanced exercise.

f. "Bars and clubs" may not operate.

g. "Food and drink establishments" may operate up to 25% of the maximum capacity of any outdoor seating areas but shall not permit patrons to enter any indoor portion of the premises except for the limited purpose of using the restroom or momentarily exiting/entering. Employees may occupy the indoor portion of the premises only to the extent necessary to operate the outdoor portion. Tables must be spaced at least six feet apart, no more than six patrons may be seated at any single table, patrons must be seated in order to be served food or drink unless ordering food for carryout, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law. Any "food and drink establishment" that is permitted to serve alcohol must close for in-person service by 9:00 p.m. and must remain closed until at least 4:00 a.m. but may continue to provide delivery service so long as no customers are permitted on the premises.

h. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 40% of maximum occupancy. All other "places of lodging" shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

i. "Close-contact businesses" may operate but may not exceed 25% of the maximum capacity of any outdoor or enclosed space on the premises or ten (10) customers inside the building at any given time.

j. Any entity not identified above may operate but may not exceed 25% of the maximum capacity of any outdoor or enclosed space on the premises.

BASELINE DIRECTIVES

Regardless of a county's level, I **DIRECT** that the following baseline directives apply at all times and in all instances:

(1) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when: eating or drinking, exercising outdoors alone or with members of the same household; or attending a small, outdoor gathering of fully vaccinated individuals no larger than the applicable mass gathering limit for the county or twenty (20) individuals, whichever is less. Notwithstanding the foregoing, fully vaccinated individuals are not required to wear a mask when attending small, outdoor gatherings of vaccinated or unvaccinated individuals no larger than the applicable mass gathering limit for the county or twenty (20) individuals, whichever is less. "Retail spaces" may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider. Masks with vents do not satisfy this requirement.

(2) Any "food and drink establishment," "close-contact business," "place of lodging," "retail space," or other business (including "essential businesses" other than those which meet the definition of a healthcare operation, utility, or indigent care services) in which members of the public regularly visit must immediately close for a period of fourteen (14) days following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, an "essential business" may be permitted to continue operating if the Department of Health, after consultation with the New Mexico Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations. Further, "essential businesses" that test each employee every two weeks and regularly provide contact tracing data to the Environment Department shall not be subject to closure under this provision; provided that fully vaccinated employees, other than those working in congregate care settings such as correctional facilities and long-term care facilities, shall not be required to be tested every two weeks.

(3) All businesses, houses of worship, and other non-profit entities must adhere to the pertinent CSP's. In the event the pertinent CSP's specify a reduced capacity limit, the CSP's limit shall control.

(4) Private educational institutions serving children and young adults from pre- Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction contained in the New Mexico's Public Education Department's "Reentry Guidance" and "COVID-19 Response Toolkit for New Mexico's Public Schools", available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate up to maximum capacity. Private schools shall report to the New Mexico Public Education Department all cases of COVID-19-positive students, staff, contractors and volunteers associated with the school within four hours of the school being notified of the positive case, pursuant to the procedures in the current COVID-19 Response Toolkit for New Mexico's Public Elementary Schools. Private schools must immediately close for a period of fourteen (14) days following the last occurrence of four (4) or more rapid responses within a fourteen (14) day period. Private schools also are subject to inclusion on the New Mexico Environment Department's watchlist and closure list.

(5) State museums may operate subject to the capacity level and restrictions applicable to comparable private museums located in their respective counties.

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 Public Health Act.

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

(4) This Order shall take effect April 30, 2021, at 8:00 a.m. and remain in effect through May 28, 2021, provided that paragraph (1) of the Baseline Directives shall be effective immediately and all other provisions of the previous Order shall remain in effect until the remainder of this Order becomes effective.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

I FURTHER ADVISE the public to take the following preventive precautions:

-- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships.

ATTEST:

/ S /
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 28TH DAY OF APRIL 2021

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

/ S /
TRACIE C. COLLINS, M.D.
SECRETARY OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH