

EXECUTIVE ORDER 2021-059

AUTHORIZING THE SECRETARY OF THE DEPARTMENT OF HEALTH TO ESTABLISH CREDENTIALING AND APPROVAL OF STATE CREDENTIALLED PHYSICIANS AND CREDENTIALLED ADVANCED PRACTICE CLINICIANS IN RESPONSE TO MEDICAL STAFF SHORTAGES

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, I issued Executive Order 2020-004 declaring that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked my authority under the All Hazards Emergency Management Act;

WHEREAS, I have renewed and extended the public health emergency in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2020-023, 2021-030, 2021-044, 2021-049, 2021-054, and 2021-058;

WHEREAS, the public health emergency declaration is likely to be extended and renewed on an ongoing basis for the foreseeable future;

WHEREAS, surges in cases of COVID-19 and deaths related to COVID-19 continue to proliferate due to more transmissible and deadly variants of the virus;

WHEREAS, as of October 15, 2021, the New Mexico Department of Health reported 263,755 confirmed cases of COVID-19 in New Mexico and 4,930 related deaths;

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

WHEREAS, New Mexico is in the midst of an urgent medical crisis which has strained the ability of both institutional and individual providers to deliver the quality of care New Mexicans due to the ongoing COVID-19 pandemic;

WHEREAS, the State is now experiencing a drastic shortage in the number of acute care medical providers available as a result of high patient censuses and fatigue;

WHEREAS, this crisis and shortage of medical professionals has created extraordinary medical circumstances, and it will require providers to change their normal perspective to a crisis perspective;

WHEREAS, many providers may need to provide care within the scope of practice of their license but beyond their normal scope or practice to assist patients in acute care hospital facilities throughout the state;

WHEREAS, due to the nature of the public health emergency and the impact on medical resources, the State has convened a Medical Advisory Team of experts in health, ethics, and law to, inter alia, address best practices in the treatment and care of New Mexicans suffering from COVID-19;

WHEREAS, the Medical Advisory Team notified the Secretary of Health on October 15, 2021, that acute care medical staffing conditions for the possible implementation of "crisis standards of care" are present within the State, and that it is appropriate to apply crisis standards of care in some acute care hospital settings;

WHEREAS, if crisis standards of care are implemented, healthcare professionals may be asked to assist in areas outside their scope of practice to provide medical care in an acute care hospital setting, or as a triage officer or member of a triage board with respect to the treatment decisions related to the care of a patient; and

WHEREAS, for these reasons, I find that it is in the public interest to invoke certain provisions of All Hazards Emergency Management Act and Emergency Licensing Act to ensure physicians will not hesitate to respond and provide necessary assistance if crisis standards of care are brought into effect.

NOW, THEREFORE, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution, the All Hazards Emergency Management Act, and the laws of the State of New Mexico do hereby **ORDER** and **DIRECT** as follows:

1. Pursuant to the authority vested in me by NMSA 1978, Section 12-10-4 (2007), and in accordance with NMSA 1978, Sections 12-10-4, -11, and -13 (2007), the New Mexico Department of Health is hereby directed to undertake all steps necessary to credential physicians and other licensed healthcare providers with authority under New Mexico law to provide medical care independently and not under the supervision of a physician (i.e., "advanced practice clinicians") who are providing care to a person in an acute care hospital setting, or when the physician serves as a triage officer or member of a triage board with respect to the treatment decisions related to the care of a person. Such physicians shall be identified as "Credentialed Physicians." Such advanced practice clinicians shall be identified as "Credentialed Advanced Practice Clinicians." For purposes of this Order, "physicians" include medical doctors and doctors of osteopathic medicine. For purposes of this Order, "advanced practice clinicians" include certified nurse practitioners (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.2 (2014)), certified registered nurse anesthetists (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.3 (2014)), clinical nurse specialists (licensed by the Board of Nursing in accordance with NMSA 1978, § 61-3-23.4 (2014)), and certified nurse-midwives (licensed by the 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(V) (2017) and NMAC 16.11.2).

2. The Secretary of the Department of Health (the "Secretary") shall designate physicians as "Credentialed Physicians" and advanced practice clinicians as "Credentialed Advanced Practice Clinicians" based upon findings that: (1) the physician/advanced practice clinician services will materially further the State 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.

3. "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 non11al and privileged scope of practice, and/or are serving as a triage officer or triage board member, in a hospital acute care setting. See NMSA 1978, §§ 41-4-1 to -27; §§ 12-10-4, -11, -13.

4. The directives contained in paragraphs 1-3 within this Order become effective and may be invoked only after the Secretary, upon consultation with the New Mexico Medical Advisory Team, declares that it is necessary for the State to recognize that conditions requiring the potential implementation of crisis-level standards of care are present.

I FURTHER ORDER and DIRECT as follows:

1. This Order supersedes any previous orders, proclamations, policies, or directives to the extent they are in conflict.

2. This Order shall take effect on October 18, 2021, and shall remain in effect until November 17, 2021.

ATTEST:

/ S /
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 18TH DAY OF OCTOBER 2021

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

/ S /
MICHELLE LUJAN GRISHAM
GOVERNOR