

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

August 12, 2022

**Public Health Emergency Order Clarifying
All Orders, Directives, Guidance and Advisories Remaining
in Effect and Imposing Certain Public Health Measures**

PREFACE

The purpose of this amended Public Health Emergency Order is to provide current guidance regarding all mandates and clarify all public health orders remaining in effect in relation to the Novel Coronavirus Disease 2019 ("COVID-19"). All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole.

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 August 26, 2022;

WHEREAS, confirmed cases in the United States have risen to more than 93 million and confirmed COVID-19 infections in New Mexico have risen to over 596,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 1 million Americans and over 8,200 New Mexicans;

WHEREAS, the spread of COVID-19 in the State of New Mexico poses an ongoing 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, the need to provide statewide non-congregate sheltering for first responders, essential personnel and certain vulnerable populations who have tested positive for COVID-19 remains, and the state desires to continue providing non-congregate sheltering for such populations and seek reimbursement from the Federal Emergency Management Administration ("FEMA") for all such costs associated therewith;

WHEREAS, we now have effective tools and practices to minimize the spread of COVID-19, such as COVID vaccination, earlier home-based COVID testing with adequate quarantine for those who are exposed and isolation of those who test positive, early COVID therapeutic treatment for those who test positive, the consistent and proper use of more effective face coverings, and more robust and community-specific data reporting to guide individuals and communities based on current case counts and hospitalization rates; the effectiveness of these new tools and practices warrant the lifting of certain restrictions placed upon the State;

WHEREAS, the protection of our most vulnerable New Mexicans, including those who are immune compromised or have other pre-existing conditions that place them at high risk for serious COVID-illness, remains of paramount importance; and

WHEREAS, the New Mexico Department of Health ("NMDOH") 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.

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 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.

ORDER

I HEREBY DIRECT AS FOLLOWS:

- (1) All Public Health Emergency Orders adopted in relation to the COVID-19 public health emergency are hereby rescinded, and only those directives stated herein shall remain in effect until otherwise amended or rescinded.
- (2) All current guidance documents and advisories issued by the Department of Health in response to the COVID-19 public health emergency remain in effect.

I FURTHER DIRECT:

- (1) All facilities licensed or certified by the Centers for Medicare and Medicaid Services ("CMS"), including all hospital types, long-term care facilities, hospice facilities, and rehabilitation facilities are instructed to adhere to all COVID-related requirements prescribed by CMS, including, but not limited to, masking and patient/staff vaccination. Facilities reporting staff vaccination status in the federal CMS reporting system are not required to concurrently report such data to the state reporting system. NMDOH no longer requires weekly testing for healthcare workers whose vaccine status is not up to date.
- (2) For the duration of the public health emergency all assisted living facilities and adult day care settings are required to adhere to all COVID-related requirements to which hospitals and nursing homes are held by CMS, including, but not limited to, masking and vaccination. These facilities will continue to report staff vaccination status to the State as long as CMS requires such reporting, at the same frequency as required by CMS for the facility types listed in paragraph 1 above.
- (3) Any paid or unpaid individuals working in State correctional facilities are required to be vaccinated against COVID-19 unless they qualify for an exemption.
 - a. This section applies to individuals providing services who have the potential for direct or indirect exposure to inmates in a State correctional facility. This section also applies includes contractors who perform services on-site at a correctional facility.
 - b. "Vaccinated" for this order means completing the primary series of a COVID-19 vaccination. The primary series of vaccination occurs after an individual completes the entire recommended series of a COVID-19 vaccine approved by the Food and Drug Administration (FDA), including on an emergency use basis, to prevent COVID-19. An individual will complete the primary series of vaccination two weeks after the second dose of the Pfizer-BioNTech, Moderna, or Novavax COVID-19 vaccines. An individual will complete the primary series of vaccination two weeks after a single-dose Johnson and Johnson's Jassen COVID-19 vaccine.
 - c. "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.
 - d. The individuals 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.
 - i. To be eligible for an exemption due a qualifying medical condition, the individual must provide their employer or operator of the State correctional 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;

ii. To be eligible for an exemption due to a disability, the individual must provide their employer or the operator of the State correctional 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 need for the accommodation; or

iii. 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 State correctional 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.

e. Individuals subject to Section (3) of this Order shall provide proof of vaccination or exemption to their respective supervisors.

(4) All facilities subject to paragraphs 1 and 2 above are advised to evaluate Centers for Disease Control and Prevention ("CDC") community transmission levels in their locality and adopt more stringent precautions, if needed. CDC community transmission levels can be accessed via the following link: https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=New+Mexico&data-type=Risk&null=Risk.

(5) All New Mexicans should remain aware of the importance of protecting our most vulnerable population groups, including those who are older, immune compromised, or have other pre-existing conditions that place them at high risk for serious COVID illness. Additional information from the CDC about risks for illness can be accessed via the following link: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

(6) All New Mexicans should be aware that there are now tools that can be used to direct both isolation for those who have acquired COVID and quarantine for those who have been exposed to COVID. In these two situations, all New Mexicans are strongly encouraged to use the CDC Quarantine and Isolation Calculator that can be accessed via the following link: <https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html>.

(7) All businesses, establishments, and non-profit entities are recommended to adhere to the latest CDC guidance for Workplace and Businesses available via the following link: <https://www.cdc.gov/coronavirus/2019-ncov/community/workplaces-businesses/index.html>. These same entities are also recommended to follow the CDC Guidance for Specific industries and Occupations which can be accessed here: <https://www.cdc.gov/coronavirus/2019-ncov/community/workplaces-businesses/specific-industries.html>. Businesses, establishments, and non-profit entities are further recommended to adhere to CDC guidance for Cleaning and Disinfecting Your Facility. This guidance may be accessed via the following link: https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcommunity%2Forganizations%2Fcleaning-disinfection.html.

(8) Nothing in this Order shall be construed as prohibiting any business, house of worship, non-profit entity, or other entity from imposing more stringent requirements.

(9) Public, private, and charter educational institutions shall adhere to the "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. Public and private educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the COVID-19 Response Toolkit for New Mexico's Public Schools.

(10) All Long-Term Care Facilities, including nursing homes, assisted living facilities, and hospice facilities must stay apprised and comply with the applicable directives and guidelines issued by the Department of Health in consultation with the Aging and Long-Term Services Department, which are available on the NMDOH website.

(11) All public responder, State, Local, and Tribal agency personnel shall continue coordinate with the NMDOH to organize "non-congregate sheltering" for firefighters, law enforcement, medical personnel, ambulance and emergency medical response personnel, people experiencing homelessness, domestic violence victims, and other highly at-risk persons as identified and approved by NMDOH, including those individuals who have tested positive for COVID-19 or have been documented as exposed to positive COVID-19 persons in the course of their duties and do not require medical care. All individuals temporarily quarantined under

this order must meet the health and safety requirements for placement as determined by NMDOH. Alternate medical care sites and temporary hospitals are not considered non-congregate sheltering. Non-congregate sheltering shall not duplicate the services provided by another federal agency. NMDOH and the New Mexico Department of Homeland Security and Emergency Management ("DHSEM") shall send a statewide non-congregate sheltering request letter to FEMA seeking reimbursement for expenses of non-congregate sheltering. This statewide effort continues to reduce the burden on State, Local and Tribal jurisdictions to independently develop approval for non-congregate sheltering.

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 or state agencies from enacting more stringent restrictions than those required by the Order.
- (4) This Order shall take effect immediately and remain in effect until amended or rescinded by the Secretary.
- (5) NMDOH, the New Mexico Department of Public Safety, DHSEM, 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 Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under NMSA 1978, Section 12-10A-19.

ATTEST:

/ S /
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 12TH DAY OF AUGUST 2022

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