

EXECUTIVE ORDER NO. 283

WHEREAS, on March 9, 2020, I issued Executive Order No. 103, declaring the existence of a Public Health Emergency, pursuant to the Emergency Health Powers Act ("EHPA"), N.J.S.A. 26:13-1 et seq., and a State of Emergency, pursuant to the New Jersey Civilian Defense and Disaster Control Act ("Disaster Control Act"), N.J.S.A. App A:9-33 et seq., in the State of New Jersey for Coronavirus disease 2019 ("COVID-19"), the facts and circumstances of which are adopted by reference herein; and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, 191, 200, 210, 215, 222, 231, 235, and 240, which were issued each month between April 7, 2020 and May 14, 2021, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency in effect at the time continued to exist; and

WHEREAS, New Jersey made significant progress in responding to COVID-19 and mitigating its devastating effects, in particular in light of the advent of three effective vaccines that, among other things, had significantly reduced the likelihood of both contracting and transmitting the variants of COVID-19 that were present in the United States at the time; and

WHEREAS, on June 4, 2021, in light of these developments, I signed Assembly Bill No. 5820 into law as P.L.2021, c.103, and issued Executive Order No. 244, which terminated the Public Health Emergency declared in Executive Order No. 103 (2020); and

WHEREAS, P.L.2021, c.103 sought to enable the State to bring an end to its prior Public Health Emergency while still allowing for an orderly continuation of the Administration's ability to order certain public health measures relating to COVID-19, including but not limited to vaccine distribution, administration, and management, COVID-19 testing, health resource and personnel allocation, data collection, and implementation of recommendations of the Centers for Disease

Control and Prevention ("CDC") to prevent or limit the transmission of COVID-19, including in specific settings; and

WHEREAS, P.L.2021, c.103 explicitly maintained the State of Emergency declared in Executive Order No. 103 (2020), and stated it would in no way diminish, limit, or impair the powers of the Governor to respond to any of the threats presented by COVID-19 pursuant to the Disaster Control Act; and

WHEREAS, in addition to leaving the prior State of Emergency in effect, nothing in P.L.2021, c.103 prevented the Governor from declaring any new public health emergency under the EHPA, N.J.S.A. 26:13-1 et seq., should the evolving circumstances on the ground require such a declaration; and

WHEREAS, Executive Order No. 252, issued August 6, 2021, requires all covered health care and high-risk congregate settings to maintain a policy that requires all covered workers to either provide adequate proof to the health care and high-risk congregate settings that they have been fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly beginning September 7, 2021; and

WHEREAS, the Department of Health ("DOH") issued Executive Directive 21-001 (October 7, 2021), establishing reporting protocol and extending the requirements of Executive Order No. 252 (2021) to group homes and psychiatric community homes licensed by the Department of Children and Families ("DCF"); and

WHEREAS, as the CDC has recognized, viruses can change through mutation and mutations can result in new variants of the virus, and these variants can have meaningfully distinct impacts from the original virus; and

WHEREAS, as the CDC has recognized, some variants spread more easily and quickly than other variants of the same virus, which may lead to more cases of COVID-19, increased strain on healthcare resources, more hospitalizations, and more deaths; and

WHEREAS, new variants are classified based on how easily the variant spreads, how severe its symptoms are, how it responds to treatments, and how well vaccines protect against the variant; and

WHEREAS, since Executive Order No. 244 (2021) took effect, the CDC has reported that new variants of concern of COVID-19 have been identified in the United States, particularly the B.1.617.2 ("Delta") variant and most recently the B.1.1.529 ("Omicron") variant; and

WHEREAS, although New Jersey was able to end the prior Public Health Emergency on account of the effectiveness of vaccines in reducing transmissibility of COVID-19, the Omicron variant appears to spread more easily than other variants, including Delta; early evidence suggests people who have received a primary series of a COVID-19 vaccine but have not yet received the recommended booster shot are more likely to become infected with this variant than prior variants and to be able to spread the virus to others; and some monoclonal antibody treatments may not be as effective against infection with the Omicron variant; and

WHEREAS, on January 11, 2022, I issued Executive Order No. 280, declaring the existence of a new Public Health Emergency, pursuant to the EHPA, N.J.S.A. 26:13-1 et seq., in the State of New Jersey due to the surge of cases and hospitalizations tied to the new variants of COVID-19; and

WHEREAS, on January 11, 2022, I issued Executive Order No. 281, extending various orders, including Executive Order No. 252 (2021), to ensure the State continues to have the necessary resources in place to respond to the new variants of COVID-19; and

WHEREAS, because vaccines are effective at preventing severe illness, hospitalizations, and death, including from the Omicron variant, the CDC has noted that the recent emergence of this variant emphasizes the importance of vaccination and boosters; and

WHEREAS, according to the CDC, studies show after getting the primary series of a COVID-19 vaccine, protection against the virus and the ability to prevent infection may decrease over time, in particularly due to changes in variants; and

WHEREAS, although the COVID-19 vaccines remain effective in preventing severe disease, recent data suggests their effectiveness at preventing infection or severe illness wanes over time; and

WHEREAS, the CDC has reported that vaccinated people who receive a COVID-19 booster are likely to have a stronger protection against contracting and transmitting COVID-19, particularly the Omicron variant, and stronger protection against serious illness, including hospitalizations and death; and

WHEREAS, the CDC has advised that expedient and additional public health action is necessary to prevent severe impacts on the health of individuals and the health care system due to the rapid spread of the Omicron variant; and

WHEREAS, the CDC has confirmed that the rapid increase of infections is due to the increased transmissibility of the Omicron variant and its increased ability to evade immunity conferred by past infection or vaccination; and

WHEREAS, the State has thus far administered approximately 13.2 million doses of COVID-19 vaccines, with over 7.4 million New Jerseyans having received at least one dose of a vaccine and over 6.5 million having received the primary series of a vaccine; and

WHEREAS, as of December 2021, according to the data provided by licensees to the State, about 88 percent of health care workers, 87 percent of long-term care workers, and 73 percent of workers in high-risk congregate settings licensed by the Department of Human Services and DCF that are subject to Executive Order No. 252 (2021) and DOH Executive Directive 21-001 (October 7, 2021) have received their primary series of the COVID-19 vaccination; and

WHEREAS, as of January 18, 2022, only 48 percent of eligible individuals statewide have received their booster shot; and

WHEREAS, while over 75 percent of people in the State have received the primary series of a COVID-19 vaccine, the booster rates remain significantly lower and additional steps are necessary to ensure continued vaccinations, especially boosters, of individuals to protect against spread of COVID-19; and

WHEREAS, on July 6, 2021, the U.S. Department of Justice, Office of Legal Counsel issued an opinion concluding that Section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3 does not prohibit public or private entities from imposing vaccination requirements while vaccinations are only available pursuant to Emergency Use Authorization ("EUA"); and

WHEREAS, on November 5, 2021, the federal Centers for Medicare & Medicaid Services ("CMS") issued the Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule (CMS-3415-IFC) ("CMS Rule"), which was upheld by the United States Supreme Court on January 13, 2022, requiring most Medicare and Medicaid-certified providers' and suppliers' staff to be vaccinated against COVID-19 in order to participate in the Medicare and Medicaid programs; and

WHEREAS, in order to comply with the CMS rule, providers in New Jersey subject to the rule must require their staff to have received their first dose of the vaccine by January 27, 2022 and all doses to complete a primary series of the vaccine by February 28, 2022; and

WHEREAS, waning immunity among health care workers increases their susceptibility to the virus and can place further strain on the State's health care workforce, threatening the State's ability to provide critical care to individuals; and

WHEREAS, it is necessary to rapidly increase the number of health care workers who are up to date with their COVID-19 vaccinations; and

WHEREAS, the CDC has repeatedly emphasized the importance of heightened mitigation protocols in certain congregate and health care settings because of the significant risk of spread and vulnerability of the populations served; and

WHEREAS, requiring workers in those congregate and health care settings to be up to date with their COVID-19 vaccinations can help prevent outbreaks and reduce transmission to vulnerable individuals who may be at a higher risk of severe disease; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:24 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Covered health care settings subject to the CMS rule must maintain a policy that requires covered workers to provide adequate proof that they are up to date with their COVID-19 vaccinations according to the following schedule:

- a. Unvaccinated covered workers must obtain their first dose of the primary series of a COVID-19 vaccination by January 27, 2022; and
- b. All covered workers must provide adequate proof that they are up to date with their COVID-19 vaccination by February 28, 2022; provided however, that as to having received a booster dose, covered workers must provide adequate proof that they are up to date with their COVID-19 vaccinations by February 28, 2022, or

within 3 weeks of becoming eligible for a booster dose, whichever is later.

2. Covered health care settings not subject to the CMS rule and covered high-risk congregate settings must maintain a policy that requires covered workers to provide adequate proof that they are up to date with their COVID-19 vaccinations according to the following schedule:

- a. Unvaccinated covered workers must obtain their first dose of the primary series of a COVID-19 vaccination by February 16, 2022; and
- b. All covered workers must provide adequate proof that they are up to date with their COVID-19 vaccination by March 30, 2022; provided however, that as to having received a booster dose, covered workers must provide adequate proof that they are up to date with their COVID-19 vaccinations by March 30, 2022, or within 3 weeks of becoming eligible for a booster dose, whichever is later.

3. The policies adopted by covered health care settings and covered high-risk congregate settings (collectively "covered settings") pursuant to this Order must require covered workers currently submitting to COVID-19 testing pursuant to Executive Order No. 252 (2021) to continue undergoing once or twice weekly testing until they submit adequate proof that they are up to date with their vaccination pursuant to the schedules set forth in paragraphs 1 and 2 of this Order.

4. The policies adopted by covered settings pursuant to this Order must include a disciplinary process for covered workers' noncompliance, which may include termination of employment.

5. Covered workers may demonstrate adequate proof they are up to date with their COVID-19 vaccinations by presenting the following documents if they list COVID-19 vaccines authorized for EUA in the

United States and/or the World Health Organization ("WHO"), along with an administration date for each dose:

- a. The CDC COVID-19 Vaccination Card issued to the vaccine recipient by the vaccination site, or an electronic or physical copy of the same;
- b. Official record from the New Jersey Immunization Information System (NJIIS) or other State immunization registry;
- c. A record from a health care provider's portal/medical record system on official letterhead signed by a licensed physician, nurse practitioner, physician's assistant, registered nurse or pharmacist;
- d. A military immunization or health record from the United States Armed Forces; or
- e. A Docket mobile phone application record or any state specific application that produces a digital health record.

Covered settings collecting vaccination information from covered workers must comport with all federal and state laws, including but not limited to the Americans with Disabilities Act, that regulate the collection and storage of that information.

6. For purposes of this Order, consistent with the definition provided by Executive Order No. 252 (2021) and DOH Executive Directive 21-001 (October 7, 2021), covered settings shall be defined as follows: "Health care settings" shall include acute, pediatric, inpatient rehabilitation, and psychiatric hospitals, including specialty hospitals, and ambulatory surgical centers; long-term care facilities; intermediate care facilities; residential detox, short-term, and long-term residential substance abuse disorder treatment facilities; clinic-based settings like ambulatory care, urgent care clinics, dialysis centers, Federally Qualified Health Centers, family planning sites, and Opioid Treatment Programs; community-based

healthcare settings including Program of All-inclusive Care for the Elderly, pediatric and adult medical day care programs, and licensed home health agencies and registered health care service firms operating within the State. "High-risk congregate settings" include State and county correctional facilities; all congregate care settings operated by the Juvenile Justice Commission, which includes secure care facilities and residential community homes; licensed community residences for individuals with individuals with intellectual and developmental disabilities ("IDD") and traumatic brain injury ("TBI"); licensed community residences for adults with mental illness; certified day programs for individuals with IDD and TBI, and group homes and psychiatric community homes licensed by DCF.

7. For purposes of this Order, consistent with the definition provided by Executive Order No. 252 (2021), "covered workers" shall include employees, both full- and part-time, contractors, and other individuals working in covered settings, including individuals providing operational or custodial services or administrative support.

8. For purposes of this Order, a covered worker shall be considered "up to date with their COVID-19 vaccinations" if they have received a primary series, which consists of either a 2-dose series of an mRNA COVID-19 vaccine or a single dose COVID-19 vaccine, and any booster doses for which they are eligible as recommended by the CDC. Covered workers will only be considered up to date with their vaccinations where they have received a COVID-19 vaccine that is currently authorized for emergency use by the U.S. Food and Drug Administration (FDA) or the WHO, or that are approved for use by the same. Covered workers who are not up to date with their vaccinations, or for whom vaccination status is unknown or who have not provided sufficient proof of documentation, must be considered noncompliant for purposes of this Order.

9. Nothing in this Order shall prevent a covered setting from instituting a vaccination policy that includes additional or stricter requirements, so long as such policy comports with the minimum requirements of this Order.

10. The policies adopted by covered settings pursuant to this Order must provide appropriate accommodations, to the extent required by federal and/or state law, for employees who request and receive an exemption from vaccination because of a disability, medical condition, or sincerely held religious belief, practice, or observance. The policies adopted by covered settings pursuant to this Order must require covered workers that receive an exemption pursuant to this paragraph to continue weekly or twice weekly testing as required by Executive Order No. 252 (2021).

11. The Commissioner of DOH is hereby authorized to issue a directive supplementing the requirements outlined in this Order, which may include, but not be limited to, any requirements for reporting vaccination data to the DOH. Action taken by the Commissioner of DOH pursuant to this Order shall not be subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

12. Any provision of Executive Order No. 252 (2021) that is inconsistent with this Order is superseded.

13. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

14. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this

Order, and to cooperate fully with any Administrative Orders issued pursuant to this Order.

15. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

16. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

17. This Order shall take effect immediately and shall remain in effect until revoked or modified by the Governor.

GIVEN, under my hand and seal this
19th day of January,
Two Thousand and Twenty-two,
and of the Independence of the
United States, the Two Hundred
and Forty-Sixth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor