



State of North Carolina

ROY COOPER
GOVERNOR

January 5, 2022

EXECUTIVE ORDER NO. 245

EXTENDING CERTAIN HEALTH AND HUMAN SERVICES PROVISIONS IN PREVIOUS EXECUTIVE ORDERS AND DELEGATIONS OF AUTHORITY

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the state's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-177, 180-181, 183-185, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, 228-232, 234, 238-240, and 244; and

WHEREAS, COVID-19 continues to infect thousands of North Carolinians every day, and a State of Emergency remains in place for the purpose of maintaining the state's ability to meet challenges presented by COVID-19; and

WHEREAS, there have been more than one million seven hundred sixty-three thousand (1,763,000) cases of COVID-19 in North Carolina, and more than nineteen thousand five hundred (19,500) people in North Carolina have died from the disease; and

WHEREAS, all 100 North Carolina counties are classified as high or substantial transmission areas by the Centers for Disease Control and Prevention ("CDC"); and

WHEREAS, as COVID-19 has continued to spread from person to person across the United States and world, variants (genetically distinct strains) of COVID-19 have developed; and

WHEREAS, the Delta variant, due to its increased transmissibility, became the most common form of COVID-19 in North Carolina beginning summer 2021; and

WHEREAS, new variants of the virus continue to develop, including the Omicron variant, which has been labeled a "variant of concern" by the World Health Organization, and which is more

transmissible than the original COVID-19 variant and the highly transmissible Delta variant, according to preliminary evidence; and

WHEREAS, the Omicron variant is now spreading across the state; and

WHEREAS, the state's public health experts have expressed concern that the state is seeing an increase in COVID-19 cases and associated hospitalizations from the rapidly increasing spread of the Omicron variant; and

WHEREAS, as of the date of this Executive Order, the percent of emergency department visits for COVID-like-illness, the daily number of newly diagnosed cases, the number of hospitalizations for COVID-like illness, and percentage of positive tests out of all tests are all increasing rapidly; and

WHEREAS, although the Omicron variant represents a severe threat to the unvaccinated, current evidence suggests that being fully vaccinated reduces the risk of becoming severely ill, requiring hospitalization, or dying; and

WHEREAS, in Executive Order Nos. 130, 139 and 152, the undersigned, with the concurrence of the Council of State, determined that the Secretary of the North Carolina Department of Health and Human Services (the "Secretary") required authority to modify or waive enforcement of certain legal constraints or regulations which restrict the immediate relief of human suffering; and

WHEREAS, certain provisions of Executive Order Nos. 130 and 139 were extended by Executive Order Nos. 144, 148, 152, 165, 177, 193, 211, 225, and 236 but these provisions are set to expire unless the undersigned takes further action; and

WHEREAS, the undersigned, in consultation with the North Carolina Department of Health and Human Services ("NCDHHS") has determined that, due to the progress the state has made in combating the pandemic, certain measures in Executive Orders Nos. 130 and 139 can be rescinded; and

WHEREAS, the undersigned, in consultation with NCDHHS, has determined that certain waivers concerning childcare, Medicaid, and social services are no longer required; and

WHEREAS, to ensure that the state's health care system can effectively respond to the surge in COVID-19 cases and associated hospitalizations caused by the Omicron and Delta variants, and for the other reasons specified herein, it is anticipated that the need for the remaining measures in Executive Orders Nos. 130 and 139 will continue for at least a period of ninety (90) days; and

COVID-19 Vaccinations in North Carolina

WHEREAS, until enough North Carolinians are vaccinated, COVID-19 will continue to cause devastating illness and death; and

WHEREAS, rigorous clinical trials have demonstrated that the FDA-authorized and approved COVID-19 vaccinations are safe and effective, and that the known and potential benefits of the FDA-authorized and approved COVID-19 vaccines outweigh the known and potential harms of contracting the COVID-19 virus; and

WHEREAS, safe and effective COVID-19 vaccines help protect people from severe illness, hospitalization and death and slow the spread of viral transmission and higher rates of COVID-19 vaccination in a community are associated with reduced hospitalizations and deaths; and

WHEREAS, the vaccine is free to all North Carolinians, regardless of insurance status; and

WHEREAS, COVID-19 vaccines are now readily available for children ages five (5) and above; and

Regulatory Flexibility to Address COVID-19: Prohibitions on Excessive Pricing

WHEREAS, North Carolina and its mental health, developmental disabilities, and substance abuse facilities and service providers need to take all reasonable actions to expand capacity to improve

the ability to efficiently respond to the COVID-19 pandemic, thereby reducing the probability that the demand for care in North Carolina will outpace capacity; and

WHEREAS, in some cases, these actions have required and will continue to require temporarily waiving or modifying legal and regulatory constraints so that these mental health, developmental disability, and substance abuse facilities and service providers can maintain licensure and continue to provide necessary services; and

WHEREAS, decisions about adding and transferring resources continue to require real-time decision-making; and

WHEREAS, to continue to enable rapid decision-making, the undersigned has determined that it is in the best interest of the people of North Carolina to provide the Secretary with authority to modify or waive enforcement of certain legal and regulatory constraints as necessary in order to expand capacity and save lives; and

WHEREAS, for example, health care providers are needed to administer the COVID-19 vaccine, however, many individuals with medical training are not authorized to administer vaccines due to licensing requirements; accordingly, the undersigned wishes to remove any such barriers which would prevent or impair the ability of these medical personnel from assisting with vaccine administration; and

WHEREAS, to prevent barriers to vaccine administration, it is also critically important that those administering the vaccine, and those providing their property and facilities for purposes of vaccine administration, are provided with insulation from liability to the maximum extent permitted by law; and

WHEREAS, the process of vaccinating North Carolinians to levels sufficient to protect the population requires comprehensive and aggressive statewide efforts together with robust community participation; and

WHEREAS, accordingly, state officials are directed to marshal all available state property, equipment, and personnel towards facilitating the statewide vaccination effort; and

WHEREAS, the State Health Director has been assigned authority by the Secretary, pursuant to N.C. Gen. Stat. § 130A-3, to exercise authorities under N.C. Gen. Stat. § 130A-5, including to investigate the causes of communicable disease affecting the public health in order to control and prevent those diseases, to provide, under the rules of the North Carolina Commission for Public Health, for the prevention, detection, reporting, and control of communicable diseases, and to develop and carry out health programs necessary for the protection and promotion of the public health and the control of diseases; and

WHEREAS, in Executive Order No. 236, the undersigned directed the State Health Director, in addition to and according to her authority in N.C. Gen. Stat. 130A, to issue any statewide standing order needed in her medical judgement to facilitate COVID-19 testing, vaccination, and monoclonal antibodies; and

WHEREAS, the undersigned desires that the statewide standing orders for COVID-19 testing, vaccination, and monoclonal antibody treatment continue through the effective date of this Executive Order and desires to expand the use of such orders to cover other therapeutics authorized or approved for treatment and prevention of COVID-19; and

WHEREAS, the surge in COVID-19 cases and associated hospitalizations leaves North Carolinians vulnerable to price gouging on consumer goods needed to diagnose and treat COVID-19 and to respond to the pandemic, and the prohibitions on excessive pricing are in effect through the duration of this Executive Order; and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2) the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(4) gives the undersigned the authority to “cooperate and coordinate” with the President of the United States; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7) the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of departments, offices, and agencies of the state in response to the emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1) the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2) the undersigned may take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(2), the undersigned, with the concurrence of the Council of State, may establish a system of economic controls over all resources, materials, and services, including shelter and rents; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5) the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.23, in conjunction with N.C. Gen. Stat. §§ 75-37 and 75-38, the undersigned may issue a declaration that shall trigger the prohibitions against excessive pricing during states of disaster, states of emergency, or normal market disruptions; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State on the provisions of this Executive Order requiring concurrence, consistent with the Governor’s emergency powers authority in N.C. Gen. Stat. § 166A-19.30; and

WHEREAS, all the authority granted by this Executive Order is intended to be temporary, and the waivers and modifications of enforcement set out in this Executive Order are intended to extend only through the period where they are needed to address the COVID-19 pandemic.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the authority in Executive Orders Nos. 130, 139, 144, 148, 152, 165, 177, 193, 211, 225 and 236, **IT IS ORDERED:**

Section I. Amendments to Executive Orders Nos. 130 and 139.

- A. Section 2(A)-(B), 2(E)- 2(G) of Executive Order No. 130 and Section 3 of Executive Order No. 139 are rescinded as of the effective date of this Executive Order.
- B. Section 7(A)(6)-(8) of Executive Order No. 130 are rescinded as of the effective date of this Executive Order.

- C. Section 5 of Executive Order No. 139 is rescinded as of the effective date of this Executive Order.

Section II. Extension of Executive Order No. 152.

To meet the goal of providing health care, public health, and human services during the COVID-19 pandemic, which includes the administration of FDA-authorized COVID-19 vaccines, and to protect and save lives during the COVID-19 pandemic, the undersigned orders as follows:

Executive Order No. 152, as amended by Executive Order No. 165 and as extended by Executive Order No. 177, and as further modified and extended by Executive Order No. 193 and Executive Order No. 211, as further modified and extended by Executive Order No. 225, and as extended by Executive Order No. 236, is extended by this Executive Order except where otherwise rescinded herein, and is to be in effect through April 5, 2022.

For avoidance of doubt, the preceding sentence also extends through the listed date the provisions of Executive Orders Nos. 130 and 139 that were previously extended by Executive Orders Nos. 193, 211, 225, and 236 and have not been rescinded by this Executive Order.

References to "September 22, 2020," "November 20, 2020," "February 11, 2021," "February 18, 2021," "May 10, 2021," "August 8, 2021," "October 5, 2021," or "January 5, 2022" in Executive Orders Nos. 152, 165, 177, 193, 211, 225, and 236 shall be replaced with "April 5, 2022."

Section III. Statewide Standing Orders for COVID-19 Testing, Vaccination, Monoclonal Antibodies, and other COVID-19 Therapeutics.

- A. **Statewide Standing Order for COVID-19 Testing.** In order to further protect the public health by providing greater access to COVID-19 testing, the undersigned orders the State Health Director, in addition to and in accordance with her powers set out in N.C. Gen. Stat. Chapter 130A, to issue any statewide standing order needed in her medical judgment that would allow individuals who meet NCDHHS criteria for testing to access and undergo testing for COVID-19, subject to the terms of the standing order.
- B. **Statewide Standing Order for COVID-19 Vaccination.** In order to further protect public health by providing greater access to COVID-19 vaccines, the undersigned orders the State Health Director, consistent with her powers set out in N.C. Gen. Stat. Chapter 130A, to issue such statewide standing orders as needed in her medical judgment that would allow individuals eligible for vaccinations to access and receive a COVID-19 vaccination, subject to the terms of the standing order.
- C. **Statewide Standing Order for COVID-19 Therapeutics.** In order to further protect the public health by providing greater access to COVID-19 prevention or treatment, the undersigned orders the State Health Director, in addition to and in accordance with her powers set out in N.C. Gen. Stat. Chapter 130A, to issue any statewide standing order needed in her medical judgement that would allow individuals who meet the criteria in the Food and Drug Administration Emergency Use Authorization or Approval specific to the therapy to access and receive monoclonal antibodies, or who meet the criteria in the Food and Drug Emergency Use Authorization or Approval specific to the therapy of any other therapeutic intended to prevent or treat COVID-19, subject to the terms of the standing order.
- D. **Amendment.** Subsections 3(C)(1)-(2) of Executive Order No. 130 and Subsections 2(B)(1)-(2) of Executive Order No. 193 are each amended to read as follows:
1. All persons who are licensed or otherwise authorized under an Executive Order to perform vaccinations, COVID-19 testing, or administer FDA- authorized or approved therapeutics intended to prevent or treat COVID-19; issue medical standing orders for vaccinations, testing, or the administration of antibody therapeutics intended to prevent or treat COVID-19; or perform professional skills in the field of health care are hereby requested to provide emergency services to respond to the COVID-19 pandemic and,

to the extent they are providing emergency services, therefore constitute “emergency management workers” to the extent allowed under N.C. Gen. Stat. § 166A-19.60(e).

2. Therefore, the undersigned intends that all such emergency management workers should be insulated from civil liability to the maximum extent authorized by N.C. Gen. Stat. § 166A-19.60, except in cases of willful misconduct, gross negligence, or bad faith.

Section IV. Extension of Prohibition on Price Gouging.

Pursuant to N.C. Gen. Stat. § 166A-19.23, the prohibition against excessive pricing is in effect, as provided in N.C. Gen. Stat. §§ 75-37 and 75-38, through April 5, 2022.

The undersigned encourages the North Carolina Attorney General to use all resources available to monitor reports of abusive trade practices towards consumers and make readily available opportunities to report to the public any price gouging and unfair or deceptive trade practices under Chapter 75 of the North Carolina General Statutes.

Section V. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section VI. Effective Date.

This Executive Order is effective immediately. Except as set forth expressly above, this Executive Order shall remain in effect through April 5, 2022, unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 5th day of January in the year of our Lord two thousand and twenty-two.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

