

EXECUTIVE ORDER NO. 294

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, 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, on December 29, 2021, CMS issued guidance for the CMS Rule clarifying the timeframes for compliance and the enforcement actions to which facilities will be subject if their vaccination rates are less than 100 percent by the deadlines set forth therein and are therefore considered non-compliant; and

WHEREAS, on January 11, 2022, due to the surge of cases and hospitalizations tied to the new variants of COVID-19, I signed 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., and continuing the State of Emergency declared in Executive Order No. 103 (2020) pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq., in the State of New Jersey; and

WHEREAS, on January 19, 2022, I signed Executive Order No. 283, requiring all covered health care and high-risk congregate settings to maintain a policy that requires all covered workers to provide adequate proof to the health care and high-risk congregate settings that they are up to date with their COVID-19 vaccinations, including any booster shots for which they are eligible; and

WHEREAS, on February 10, 2022, I signed Executive Order No. 288, which declared that the Public Health Emergency declared in Executive Order No. 280 (2022) continued to exist and that all Executive Orders issued, in whole or in part in response to the COVID-19 Public Health Emergency, including Executive Order No. 283 (2022), remain in full force and effect; and

WHEREAS, on March 2, 2022, I issued Executive Order No. 290, clarifying and extending the timeframes within which covered settings must require their covered workers to comply with the vaccination and booster requirements set forth in Executive Order No. 283 (2020); and

WHEREAS, on March 4, 2022, I issued Executive Order No. 292 terminating the public health emergency declared in Executive Order No. 280 (2022) effective March 7, 2022, while continuing the State of Emergency declared in Executive Order No. 103 (2020); and

WHEREAS, Executive Order No. 292 (2022) stated that Executive Order Nos. 283 and 290 remain in full force and effect pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq.; 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 that 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 particular due to transmissibility and severity of different variants circulating at different times; 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 additional public health action is necessary to prevent severe impacts on the health of individuals and the health care system due to the spread of the Omicron variant as well as other new variants; and

WHEREAS, the CDC has confirmed that the Omicron variant and other new variants have increased transmissibility and an increased ability to evade immunity conferred by past infection or vaccination; and

WHEREAS, on March 29, 2022, the Food and Drug Administration ("FDA") issued an updated emergency use authorization for a second mRNA booster dose; and

WHEREAS, on March 30, 2022, the CDC updated their guidance to allow certain populations to receive a second booster dose to increase their individual protection; and

WHEREAS, the CDC advised that all people 50 years of age and older, people 12 years of age and older who are moderately or severely immunocompromised, and people 18 through 49 years of age who received a Johnson & Johnson/Janssen primary series and a Johnson & Johnson/Janssen first booster are eligible for a second mRNA booster dose at least four months after their first booster dose; and

WHEREAS, as of March 30, 2022, the CDC advised that, while some individuals are eligible to get a second booster dose, the CDC currently considers a person boosted and up to date with their COVID-19 vaccination after receiving their first booster dose at this time; and

WHEREAS, because the CDC has not recommended that a second booster dose is necessary to be up to date with the COVID-19 vaccination at this time, and to ensure the flexibility to act consistently with the most current and appropriate scientific research, it is appropriate to clarify the requirements for compliance set forth in Executive Order No. 283 (2022) and further revised in Executive Order No. 290 (2022) to limit the definition of "up to date" to include only one booster dose and to clarify that a second booster dose is not required; 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 pursuant to Executive Order No. 283 (2022) 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 primary series of a COVID-19 vaccination pursuant to the timeframes set forth by CMS; and
- b. All covered workers must provide adequate proof that they have received their first booster dose by April 11, 2022, or within 3 weeks of becoming eligible for their first 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 pursuant to Executive Order No. 283 (2022) that requires covered workers to provide adequate proof that they are up to date with their COVID-19 vaccinations according to the following schedule:

- c. Unvaccinated covered workers must obtain their first dose of the primary series of a COVID-19 vaccination by February 16, 2022; and
- d. All covered workers must provide adequate proof that they are up to date with their COVID-19 vaccination by May 11, 2022; provided however, that as to having received their first booster dose, covered workers must provide adequate proof that they are up to date with their COVID-19 vaccinations by May 11, 2022, or within 3 weeks of becoming eligible for their first booster dose, whichever is later.

3. Paragraph 8 of Executive Order No. 283 (2022) is hereby modified as follows: 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 the first booster dose 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 FDA or the World Health Organization (WHO), or that is 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.

4. The Commissioner of the Department of Health ("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.

5. Paragraphs 1, 2, and 8 of Executive Order No. 283 (2022) and Paragraphs 1 and 2 of Executive Order No. 290 (2022) are hereby superseded to the extent they are inconsistent with this Order.

6. 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.

7. 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.

8. 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.

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

10. 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
13th day of April,
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