

EXECUTIVE ORDER NO. 281

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, and 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, Executive Order No. 111, issued March 28, 2020, requires that health care facilities report their capacity and supplies, including bed capacity ventilators, and Personal Protective Equipment ("PPE") on a daily basis; and

WHEREAS, Executive Order No. 112, issued April 1, 2020, granted the Department of Law and Public Safety, Division of Consumer Affairs, the authority to temporarily reactivate certain inactive health care licenses and allow the licensure of physicians licensed, and in good standing, in another country; suspended and waived certain licensure requirements for advanced practice nurses and physician assistants; relaxed registration requirements for the Prescription Monitoring Program; waived signature requirements for funeral agreements and authorizations; and provided certain healthcare professionals with civil or criminal immunity; and

WHEREAS, Executive Order No. 207, issued December 4, 2020, required all individuals, regardless of age, to be automatically enrolled in the New Jersey Immunization Information System

("NJIIIS"), the statewide electronic immunization registry, upon receipt of a COVID-19 vaccination; 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. 251, issued August 6, 2021, requires all public, private, and parochial preschool programs and elementary and secondary schools, including charter and renaissance schools (collectively "school districts"), to maintain a policy regarding mandatory use of face masks by staff, students, and visitors in the indoor portion of the school district premises, except in certain specified circumstances; 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, Executive Order No. 253, issued August 23, 2021, requires school districts to maintain a policy that requires all covered workers to either provide adequate proof to the school district that they have been fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly beginning October 18, 2021; and

WHEREAS, Executive Order No. 264, issued September 20, 2021, requires all child care centers and other child care facilities (collectively "child care settings") to maintain a policy regarding mandatory use of face masks by staff, child enrollees, and visitors in the indoor portion of the child care setting premises, except in certain specified circumstances; and

WHEREAS, Executive Order No. 264 (2021) further required all child care settings to maintain a policy that required all covered workers to either provide adequate proof to the child care setting

that they have been fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly beginning November 1, 2021; and

WHEREAS, Executive Order No. 271, issued October 20, 2021, requires that each executive department and agency, including an independent authority, ensure that certain new contracts, new solicitation for a contract, extension or renewal of existing contracts, and exercise of an option on existing contracts, include a clause that the contractor or any subcontractors, at any tier, that is party to the contract, must maintain a policy that requires all covered workers to either provide adequate proof to the covered contractor that they have been fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly; and

WHEREAS, as the CDC has recognized, viruses can change through mutation and mutations can result in a new variant 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 B1.1.529 ("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, 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 stronger protection against contracting and transmitting COVID-19, particularly the Omicron variant, and stronger protection against serious illness, including hospitalizations and death; and

WHEREAS, after the first confirmed case of the Omicron variant was identified in New Jersey on December 3, 2021, COVID-19 cases started to significantly and rapidly increase again; and

WHEREAS, for the first time since April 2020, the COVID-19 Activity Level reached the "Very High" score throughout the entire State the week of January 1, 2022; and

WHEREAS, as of January 10, 2022, due to the increased prevalence of the Omicron variant, there were 6,075 adult and 86 pediatric hospitalizations related to COVID-19, and within the last week there were over 229,000 new cases, by far the highest number of new cases ever and the highest number of hospitalizations since the start of the pandemic, with 419 new confirmed deaths reported within the last week; and

WHEREAS, as these numbers demonstrate, the spread of the Omicron variant has led to the highest number of cases in New Jersey ever, and has also led to a drastic increase in hospitalizations, increased risk to health and safety of health care workers, and staffing shortages; and

WHEREAS, the increased potential for such a large number of hospitalizations raises serious concerns about the public health and about the capacity of the State's hospitals and health care systems to meet the health needs of residents, even in the face of the State's preparedness and response efforts since March 2020; and

WHEREAS, health care workers must have the staffing and resources that are essential to maintaining the operations of the State's essential health care services to protect public health during the Omicron variant surge, which include but are not limited to critical and emergency health care, vaccination administration, COVID-19 testing, and contact tracing; and

WHEREAS, it remains crucial that the State understand the health care system's existing capacity and its gaps through continued reporting, which will allow additional resources to be deployed where they are most needed as the State responds to the surge in cases and increased hospitalizations related to the Omicron variant; and

WHEREAS, the spread of COVID-19 has greatly strained the resources and capabilities of county and municipal governments, including public health agencies, that provide essential services for containing and mitigating the spread of contagious diseases, such as resources for vaccination administration, COVID-19 testing, and contract tracing, and the situation is too large in scope to be handled entirely by the normal county and municipal operating services; 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, continued automatic enrollment in the NJIIS for individuals receiving a COVID-19 vaccine will facilitate and track progress relative to New Jersey's vaccination targets; and

WHEREAS, the State has thus far administered approximately 13.1 million doses of COVID-19 vaccines, with over 7.4 million New Jerseyans having received at least one dose of a vaccine and over 6.4 million having received the primary series of a vaccine; and

WHEREAS, there is no concrete timeline for authorization for use of currently available COVID-19 vaccinations for children under the age of 5; and

WHEREAS, according to data estimates, only 29.5 percent of 5-11 year-olds, 63.1 percent of 12-15 year-olds, and 75.1 percent of 16-17 year-olds in New Jersey have received their primary series of a COVID-19 vaccine; and

WHEREAS, as of January 10, 2022, only 46.3 percent of eligible individuals statewide have received their booster shot, with only 7.5 percent of persons 12-17 years old and eligible to be boosted having received their booster shot; and

WHEREAS, while over 74 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, in addition to vaccination, testing for COVID-19 remains one of the strongest tools to prevent the further spread of COVID-19, particularly the Omicron variant; and

WHEREAS, the CDC recommends that all individuals should seek testing when they are ill and isolate if they experience COVID-19 symptoms or receive a positive result; and

WHEREAS, there are currently over 1,000 testing sites available to residents of the state and since mid-December 2021, the Department of Health ("DOH") has supported approximately 100 additional testing sites while also supporting local and county governments in expanding free testing for residents; and

WHEREAS, hospitals across the State report having experienced an increase of individuals seeking testing through their emergency departments and they continue to ask members of the public to only seek urgent medical treatment from hospitals to help preserve

critical staff and resources, especially as hospitals are approaching maximum capacity; and

WHEREAS, despite the increased testing capacity, the demand for testing in light of the increase in cases caused by the Omicron variant spread continues to exceed the supply of COVID-19 tests and there are delays in processing times for test results at clinical laboratories due to the increase in volume of tests and staffing shortages; and

WHEREAS, the State must have the resources necessary to protect the public health through vaccination efforts, masking, testing, treatment, and isolation and quarantine, monitoring hospital admissions and ICU capacity, tracking activity of the virus in the community, and acquiring and maintaining stockpiles of PPE, ventilators, and other critical supplies to remain prepared for the ongoing surge; and

WHEREAS, while our vaccination and testing efforts continue to progress, an effective mass vaccination and booster program and an adequate response to the continued public health threats imposed by COVID-19, and particularly the Omicron variant, require that my Administration retain all of the flexibility and resources that a public health emergency provides; and

WHEREAS, the American Academy of Pediatrics ("AAP") has emphasized that in-person learning is critical for educational and social development of children, as evidence demonstrates that remote learning has been detrimental to the educational attainment of students of all ages and has exacerbated the mental health crisis among children and adolescents; and

WHEREAS, the CDC has also cited evidence that suggests virtual learning can lead to learning loss for children and worsening mental health problems for the younger population; and

WHEREAS, child care centers provide critical support to tens of thousands of families across the State who rely on safe, in-person environments for their children during the work day; and

WHEREAS, given the evidence regarding high transmission of the Omicron variant, the CDC continues to recommend universal indoor masking for all teachers, staff, students, child enrollees, and visitors in K-12 schools and child care settings over the age of 2 regardless of vaccination status; and

WHEREAS, the CDC continues to emphasize that children should continue full-time, in-person learning with layered prevention strategies in place, including masking in indoor settings; and

WHEREAS, the AAP similarly recommends universal masking in schools and child care settings because a significant portion of the student population has not yet received the vaccine, including individuals under the age of 5 who are not yet eligible to even receive a vaccine; and

WHEREAS, both the CDC and AAP recognize that masking is a critical tool to reduce transmission of the virus and protect unvaccinated individuals; and

WHEREAS, after consultation with the DOH, I have determined that it is necessary to continue to enforce a uniform masking policy in schools and child care settings for teachers, staff, students, child enrollees, and visitors over the age of 2 while vaccination rates are low among a significant portion of the student population and not yet available to a significant portion of the child enrollee population; and

WHEREAS, on July 6, 2021, the U.S. Department of Justice's 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; and

WHEREAS, requiring workers in schools and child care settings to receive a COVID-19 vaccine or undergo regular testing can help prevent outbreaks and reduce transmission to children, including those who have not received, or are not yet eligible to receive, a vaccination; and

WHEREAS, preventing transmission of COVID-19 is critical to keeping schools and child care settings open for in-person instruction; and

WHEREAS, school districts have access to multiple sources of funding to address costs associated with worker vaccination efforts and testing, including three rounds of federal Elementary and Secondary School Emergency Relief funds and Emergency Assistance for Nonpublic Schools within the Governor's Emergency Education Relief funds; 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 receive a COVID-19 vaccine or undergo regular testing can help prevent outbreaks and reduce transmission to vulnerable individuals who may be at higher risk of severe disease; and

WHEREAS, parties that contract with the State government provide essential services to the public and interact with the public on a regular basis, and because of the nature of their work, a significant portion of their workers are not able to work remotely; and

WHEREAS, ensuring the safety of the government workforce during this overall escalation in COVID-19 cases, hospitalizations, and deaths resulting from the Omicron variant is essential for continued operation and service to the public, and it is fitting and proper to require additional protections to the State workforce and public by continuing to require contractors to provide their vaccination or testing status as a condition of entry onto State property and into State facilities, including property and facilities leased by a contractor; and

WHEREAS, this ensures that contractors are held to the same requirements as the State workforce, which the Executive Branch in its capacity as an employer has required to receive a COVID-19 vaccine or undergo regular testing; and

WHEREAS, the State will continue to work closely with school districts and child care settings to successfully implement the requirements of this Order; and

WHEREAS, as we evaluate the appropriate response and resources needed to combat the surge in cases and increase in hospitalizations due to the Omicron variant, I have consulted with the Executive Branch departments and agencies as to what administrative orders, directives, and waivers are necessary to continue; 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. Executive Order Nos. 111, 112, and 207 (2020) shall be reinstated and remain in full force and effect, except that any civil or criminal immunity related to the COVID-19 response bestowed by Executive Order No. 112 (2020) shall not be reinstated.

2. Executive Order Nos. 251, 252, 253, 264, and 271 (2021) shall remain in full force and effect.

3. The administrative orders, directives, and waivers issued by any Executive Branch departments and agencies in whole or in part based on the authority under the EHPA to respond to the previously declared Public Health Emergency presented by the COVID-19 outbreak that are provided in the Appendix to this Order shall remain in full force and effect unless otherwise modified or revoked by the Executive Branch department or agency.

4. For purposes of this Order, "Executive Branch departments and agencies" shall mean any of the principal departments in the Executive Branch of State government and any agency, authority, board, bureau, commission, division, institution, office, or other instrumentality within or created by any such department, and any independent State authority, commission, instrumentality, or agency over which the Governor exercises executive authority, as determined by the Attorney General.

5. 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.

6. 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.

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

8. 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
11th 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