

EXECUTIVE ORDER NO. 252

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"); and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, 191, 200, 210, 215, 222, 231, 235, and 240, issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, August 27, 2020, September 25, 2020, October 24, 2020, November 22, 2020, December 21, 2020, January 19, 2021, February 17, 2021, March 17, 2021, April 15, 2021, and May 14, 2021, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey, I have issued a series of Executive Orders pursuant to my authority under the Disaster Control Act and the EHPA, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, Nos. 177-181, No. 183, Nos. 186-187, Nos. 189-198, No. 200, Nos. 203-204, No. 207, and Nos. 210-211 (2020) and Nos. 214-216, Nos. 219-220, Nos. 222-223, No. 225, Nos. 228-235, and Nos. 237-244, No. 246, No. 249, and No. 251 (2021), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, on June 4, 2021, 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) but maintained the State of Emergency declared in that same Order; and

WHEREAS, P.L.2021, c.103 provided that following the termination of the Public Health Emergency declared in Executive Order No. 103 (2020), the Governor may continue to issue Orders related to vaccine distribution, administration, and management, COVID-19 testing, and data collection; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") has reported that new variants of COVID-19 have been identified in the United States, and that certain variants, particularly the B.1.617.2 (Delta) variant, are more transmissible; and

WHEREAS, the CDC has emphasized that vaccination is a critical means to prevent spread of COVID-19 and to avoid infection of those individuals that cannot be vaccinated because their age or medical conditions precludes them from receiving one; and

WHEREAS, while over 5 million people in the State have been fully vaccinated against COVID-19, additional steps are necessary to ensure continued receipt by individuals in certain settings of concern to protect against spread of COVID-19 and to protect at-risk populations in their care; 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, 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 certain 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 a higher risk of severe disease; and

WHEREAS, this Order is related to vaccination management, COVID-19 testing, and data collection, and is thus consistent with P.L.2021, c.103;

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 and high-risk congregate settings ("covered settings") must maintain a policy that requires covered workers to either provide adequate proof that they have been fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly. This requirement shall take effect on September 7, 2021, at which time any covered workers that have not provided adequate proof that they are fully vaccinated must submit to weekly or twice weekly testing on an ongoing basis until fully vaccinated.

2. Covered workers may demonstrate proof of full vaccination status by presenting the following documents if they list COVID-19 vaccines authorized for Emergency Use Authorization ("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. 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.

3. To satisfy the testing requirement, a covered worker must undergo screening testing at minimum one to two times each week. Where a covered setting requires an unvaccinated covered worker to submit proof of a COVID-19 test, the worker may choose either antigen or molecular tests that have EUA by the U.S. Food and Drug Administration ("FDA") or is operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. Where a covered setting provides the unvaccinated covered worker with on-site access to COVID-19 tests, the covered setting may similarly elect to administer or provide access to either an antigen or molecular test. If the covered worker is not working on-site in the covered setting during a week where testing would otherwise be required, the worker is not required to submit to testing for that week. This requirement shall not supplant any requirement imposed by the covered setting regarding diagnostic testing of symptomatic workers or screening test of vaccinated workers.

4. Covered settings must have a policy for tracking test results from testing required by this Order and must report results to local public health departments.

5. For purposes of this Order, covered settings shall be defined as follows: Health care facilities 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; secure care facilities operated by the Juvenile Justice Commission; licensed community residences for individuals with intellectual and developmental disabilities ("IDD") and traumatic brain injury ("TBI"); licensed community residences for adults with mental illness; and certified day programs for individuals with IDD and TBI. Long-term care facilities that are subject to New Jersey Department of Health ("DOH") Executive Directive No. 20-026 and all subsequent supplemental directives, issued in reliance on the existence of the Public Health Emergency, which remain in effect until January 11, 2022, pursuant to P.L.2021, c.103, must continue to follow any additional requirements in those directives regarding testing.

6. For purposes of this Order, "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.

7. For purposes of this Order, a covered worker shall be considered "fully vaccinated" for COVID-19 two weeks or more after they have received the second dose in a two-dose series or two weeks or more after they have received a single-dose vaccine. Individuals will only be considered fully vaccinated where they have received a COVID-19 vaccine that is currently authorized for emergency use by the FDA or the WHO, or that are approved for use by the same. Workers who are not fully vaccinated, or for whom vaccination status is unknown or who have not provided sufficient proof of documentation, must be considered unvaccinated for purposes of this Order.

8. Nothing in this Order shall prevent a covered setting from instituting a vaccination or testing policy that includes additional or stricter requirements, so long as such policy comports with the minimum requirements of this Order. A covered setting may also maintain a policy that requires more frequent testing of covered workers.

9. 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 and testing data to the DOH. Action taken by the Commissioner of Health 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..

10. 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.

11. 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.

12. 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.

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

14. 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
6th day of August,
Two Thousand and Twenty-one,
and of the Independence of the
United States, the Two Hundred
and Forty-Sixth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ McKenzie A. Wilson

Deputy Chief Counsel to the Governor