PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
ACTING SECRETARY BILLY J. JIMENEZ

DECEMBER 9, 2020

Public Health Emergency Order Recognizing the Activation of Crisis Care Standards and Establishing the Credentialing and Approval of COVID-19 Credentialed Physicians and COVID-19 Credentialed Advanced Practice Clinicians

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through December 11, 2020;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 285,000 Americans and over 1,700 New Mexicans;

WHEREAS, confirmed cases in the United States have risen to more than 15.2 million and confirmed COVID-19 infections in New Mexico have risen to over 110,000, with significant recent spikes in cases in New Mexico threatening to overwhelm our hospitals;

WHEREAS, the State of New Mexico is in the midst of an urgent medical crisis caused by the COVID pandemic which has strained the ability of both institutional and individual providers to deliver the quality of care New Mexicans ordinarily expect;

WHEREAS, there is anticipated to be a shortage in the number of physicians, nurses, and other healthcare workers available given the continually increasing number of COVID-19 infections in the State;

WHEREAS, clinical resources and supplies are currently taxed and are anticipated to be even more greatly taxed as COVID-19 infections increase, resulting in the postponement and discontinuation of various essential medical services;

WHEREAS, a host of modifications of normal medical practice will be necessitated to address the ongoing surge in COVID-19 infections in the New Mexico and the attendant detrimental consequences to medical practice and medical service availability within the State;

WHEREAS, on December 4, 2020, Governor Michelle Lujan Grisham issued Executive Order 2020-083 ("EO 2020-083"), stating that "'Crisis Care' standards may need to be implemented over the next several weeks and our State should prepare for that possibility";

WHEREAS, EO 2020-083 orders and directs the New Mexico Department of Health to undertake all steps necessary to credential and approve certain physicians and other licensed healthcare providers as "COVID-19 Credentialed Physicians" and certain advance practice clinicians as "COVID-19 Credentialed Advanced Practice Clinicians" so that such individuals shall be considered public employees for purposes of the Tort Claims Act under the All Hazards Emergency Response Act;

WHEREAS, on December 2, 2020, the New Mexico Medical Advisory Team notified the Acting Secretary of Health that "Crisis Care Standards" have been activated within the state and that it is appropriate to apply Crisis Care Standards in hospital settings;

WHEREAS, during a declared Public Health Emergency, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Emergency Response Act to "utilize, secure or evacuate health care facilities for public use." NMSA 1978, § 12-10A-6(A)(l). The Department of Health also possesses the legal authority under the Public Health Act to "respond to public health emergencies," "ensure the quality and accessibility of health care services and the provision of health care when health care is otherwise unavailable," "control and abate the causes of disease, especially epidemics," and "maintain and enforce rules for the control of conditions of public health importance." NMSA 1978, § 24-1-3; and

WHEREAS, the Department of Health finds that it is necessary and appropriate under the current circumstances for certain physicians and other medical clinicians who evidence the meeting of certain qualifications to become approved to perform certain medical duties by the Acting Cabinet Secretary and to become credentialed for the purpose of being deemed public employees for purposes of the New Mexico Tort Claims Act.

NOW, THEREFORE, I, Billy J. Jimenez, Acting Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to Executive Order 2020-083 under the full scope of her emergency powers under the All Hazard Emergency Management Act and the Emergency Licensing Act, do hereby **DECLARE** that it is necessary and appropriate under the current circumstances for certain physicians and other medical clinicians who evidence the meeting of certain qualifications to become approved to perform certain medical duties by the Acting Cabinet Secretary and to become credentialed for the purpose of being deemed public employees for purposes of the New Mexico Tort Claims Act.

I FURTHER DIRECT that the credentialing and approval of providers credentialed and approved under this Order shall be conducted as follows:

1. **DEFINITIONS**

As used in this Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(a) "Applicant" means a natural person who is licensed as a medical practitioner and who applies for credentialing and approval as a COVID-19 Credentialed Physician or a COVID-19 Advanced Practice Clinician.

(b) "Application" means an application for credentialing and approval of a person to be a COVID-19 Credentialed Physician or COVID-19 Advanced Practice Clinician, that is completed utilizing the Department-approved application form.

(c) "Application form" means the form available online at www.nmhealth.org.

(d) "COVID-19 Credentialed Advanced Practice Clinician" means a natural person who is licensed as a healthcare provider, who is credentialed and approved by the New Mexico Department of Health for the purpose of deeming the person to be a public employee pursuant to the Emergency Licensing Act and the New Mexico Tort Claims Act. A COVID-19 Advanced Practice Clinician shall hold authority under New Mexico law to provide medical care independently and not under the supervision of a physician, and shall be deemed a public employee to the limited extent that, and in the limited circumstance in which, the clinician provides medical care, in a hospital acute care setting, to a person infected with the COVID-19 virus or to a person that the clinician reasonably believes may be infected with COVID-19 virus. COVID-19 Credentialed Advanced Practice Clinicians are limited to the following:

i) certified nurse practitioners (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.2);

ii) certified registered nurse anesthetists (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.3);

iii) clinical nurse specialists (licensed by the Board of Nursing in accordance with NMSA 1978, § 61-3-23.4); and

iv) certified nurse-midwives (licensed by the Board of Nursing pursuant to the Nursing Practice Act and licensed by the Department of Health as a certified nurse-midwife pursuant to NMSA 1978, § 24-1-3(R) and NMAC 16.11.2).

(e) "COVID-19 Credentialed Physician" means a medical doctor or doctor of osteopathic medicine who holds authority under New Mexico law to provide medical care, who is credentialed and approved by the New Mexico Department of Health for the purpose of deeming the person to be a public employee pursuant to the Emergency Licensing Act and the New Mexico Tort Claims Act. A COVID-19 Credentialed Physician shall be deemed a public employee to the extent that, and in the limited circumstance in which, the physician provides medical care in a hospital acute care setting to a person infected with the COVID-19 virus or to a person that the physician reasonably believes may be infected with COVID-19 virus.

(f) "Credentialed Practitioner" means a COVID-19 Credentialed Physician or a COVID-19 Advanced Practice Clinician.

(g) "Facility" means the acute care hospital facility or institution at which an applicant intends to provide medical services, whether for consideration or on a voluntary basis.

(h) "Licensed" means licensed, certified, or permitted to provide medical care to a person by an authorized governmental licensing authority in the State of New Mexico.

2. **DESIGNATION OF CREDENTIALED PRACTITIONERS; EFFECT**

The Secretary of Health shall designate a physician as a COVID-19 Credentialed Physician, or a clinician as a COVID-19 Credentialed Advanced Practice Clinician, based upon findings that: (1) the physician/advanced practice clinician services will materially further the State's interest in public health and welfare, and (2) the physician/advanced practice clinician possesses the requisite skills and background necessary to provide care during the pendency of the existing health emergency. The Secretary may weigh and consider any additional factors the Secretary deems appropriate given the operative facts and circumstances. The Secretary shall implement an application process, as more set forth more fully herein, for the purpose of identifying eligible medical practitioners and assessing their scopes of current practice and COVID-19 clinical services proposed for approval by the Department.

COVID-19 Credentialed Physicians and COVID-19 Credentialed Advanced Practice Clinicians shall only be considered public employees for purposes of the Tort Claims Act to the limited extent and in the limited circumstance in which such Credentialed Practitioners provide medical care outside of their normal and privileged scope of practice in a hospital acute care setting to a person infected with the COVID-19 virus or to a person reasonably believed to be infected with the COVID-19 virus. NMSA 1978, §§ 41-4-1 to -27; NMSA 1978, §§ 12-10-4, -11, -13.

(a) **Application Process**

An applicant or a facility affiliated with an applicant shall submit a completed application to the e-mail address that is identified on the application form.

The Secretary or his or her designee(s) shall review the application and render a determination of whether to grant or deny the application in whole or in part based on operative facts and circumstances, including, but not limited to, the nature of the applicant's current primary scope of medical practice, the nature of the applicant's proposed COVID-19 scope of practice, the extent of deviation between the applicant's primary scope of practice and proposed COVID-19 scope of practice, and other factors as the Secretary may deem appropriate.

(b) **Content of Application**

The information required to be submitted in the application shall include, but need not be limited to, the following:

1. Identity and contact information of the applicant;
2. Professional qualifications of the applicant, including the applicant's professional degree;
3. Main location of the facility;
4. Main scope of current practice;
5. Proposed practice locations, including name and contact information for associated facilities;
6. Proposed COVID-19 clinical services;
7. Request for designation as a COVID-19 Credentialed Physician or COVID-19 Credentialed Advanced Practice Clinician;
8. Name and signature of applicant; and
9. Proof of: agreement between the applicant and the associated facility, that the facility is willing to permit the performance of the identified proposed COVID-19 clinical services on the facility's premises, and that the applicant is willing to perform such services.

(c) **Disclaimers**

The Secretary or his or her designee may rescind approval of an application upon notice to an affected applicant and associated facility for cause, which includes, but is not limited to, falsification of any information included within the application or any other information or material submitted to the Department. A previously issued approval of an application shall be deemed automatically rescinded upon the suspension or revocation of an applicant's medical license by the applicant's professional licensing authority.

A Credentialed Practitioner and an associated facility shall at all times adhere to applicable ethical standards.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) This Order shall take effect on December 9, 2020 and remain in effect through January 5, 2021.

THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect for the duration indicated in the Order unless otherwise rescinded.

ATTEST:

Maggie Toulouse Oliver

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 9TH DAY OF DECEMBER 2020

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

BILLY J. JIMENEZ
ACTING CABINET SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH