State of South Carolina

Executive Department

FILED

MAR 19 2020

Mark Hammond
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO. 2020-11

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that the 2019 Novel Coronavirus ("COVID-19") poses an actual or imminent public health emergency for the State of South Carolina; and

WHEREAS, in addition to declaring a State of Emergency, Executive Order No. 2020-08 placed certain units or personnel of the South Carolina National Guard on State Active Duty, pursuant to section 25-1-1840 of the South Carolina Code of Laws, as amended, and directed, *inter alia*, the closure of public schools in those counties where the South Carolina Department of Health and Environmental Control ("DHEC"), in consultation with the Centers for Disease Control and Prevention ("CDC"), identified instances of COVID-19 transmission via "community spread"; and

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 17, 2020, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more persons in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, COVID-19 represents an evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate actions in proactively preparing for and promptly responding to the current public health emergency and the significant economic impacts associated with the same; and

WHEREAS, in recognition of the foregoing, the undersigned has determined that additional action is needed to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional proactive measures to safeguard the health and safety of state employees; and

WHEREAS, due to the evolving nature and scope of the present emergency, the undersigned has also determined that the State of South Carolina must promptly initiate and implement further emergency measures to prepare for and respond to the significant, unanticipated economic and other impacts associated with COVID-19 and to mitigate the resulting burdens on individuals, businesses, and healthcare providers in the State of South Carolina; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists," and "suspend[ing] provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, in the context of a public health emergency, section 25-1-440(e) of the South Carolina Code of Laws, also "authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this act"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, for the aforementioned and other reasons, and pursuant to the cited authorities and other applicable law, the undersigned has determined that the evolving public health threat posed by COVID-19 requires additional proactive action by the State of South Carolina and the implementation of further extraordinary measures to cope with the existing or anticipated situation, to include providing for the continuity of state government operations, safeguarding the health and safety of state employees, mitigating significant economic impacts and burdens on affected individuals and employers, and providing regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Health and Safety of State Employees and Continuity of Essential Government Operations and Emergency Services

To ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional proactive measures to safeguard the health and safety of state employees, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby direct that all non-essential employees and staff of the State of South Carolina, as described below, shall not report to work, physically or in-person, effective Friday,

March 20, 2020, and until further notice. For purposes of this Section, essential employees and staff are those designated by, and in the sole discretion of, the corresponding Agency Head, or their designee, as essential or mission-critical to the State's ongoing preparation for and response to emergency conditions related to COVID-19 or otherwise necessary to serving the State of South Carolina by ensuring the continuity of critical operations of state government. Essential employees and staff may still be required to report to work as determined by, and in the sole discretion of, the corresponding Agency Head or their designee. Notwithstanding the foregoing or any previous event-specific employment classifications or designations, for purposes of this emergency, essential may be defined differently than it has been defined or applied in the context of hazardous weather events. In accordance with prior directives, as well as related guidance issued by the South Carolina Department of Administration ("Department"), state agencies and departments shall utilize, to the maximum extent possible, telecommuting or work-from-home options for non-essential employees and staff. This Section shall apply to state government agencies, departments, and offices under the authority of the undersigned. I further direct the Department to provide any necessary and appropriate supplemental guidance to such agencies, departments, and offices and to any additional agencies, departments, and offices so as to facilitate and expedite implementation of these initiatives.

B. I hereby prohibit any county, municipality, or other political subdivision of the State of South Carolina from closing any location or facility that is occupied or utilized, in whole or in part, by any agency, department, official, or employee of the State. Accordingly, pursuant to sections 1-3-410, 25-1-440, and 25-1-450 of the South Carolina Code of Laws, as well as other applicable law, I hereby direct that any such county, municipality, or other political subdivision of this State shall authorize, allow, and provide access to such locations or facilities by any state agency or department, and the officials and employees thereof, as deemed necessary and appropriate and in the manner prescribed by the state agency or department so as to ensure the uninterrupted performance and provision emergency, essential, or otherwise mission-critical government functions and services during the State of Emergency.

Section 2. Emergency Measures for Unemployment Claims and Benefits

To prepare for and respond to the significant economic impacts associated with COVID-19, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must promptly undertake and implement additional measures to prepare for and respond to the unanticipated economic impacts associated with COVID-19 and to mitigate the resulting burdens on individuals and businesses in the State of South Carolina. In recognition of the complexities posed by the current emergency circumstances, the United States Department of Labor ("DOL") issued Unemployment Insurance Program Letter No. 10-20, on March 12, 2020, providing guidance to state workforce agencies on various matters regarding unemployment benefits and "flexibilities related to COVID-19," and in doing so, recommended, *inter alia*, that "states should consider temporarily waiving" any specific requirements related to waiting periods for individuals who are otherwise eligible for unemployment benefits.

B. I hereby direct the South Carolina Department of Employment and Workforce ("DEW") to waive, on a temporary basis and consistent with the aforementioned DOL guidance, application of the one-week waiting period for individuals who are otherwise eligible to receive unemployment benefits, pursuant to section 41-35-110(4) of the South Carolina Code of Laws, as amended, or alternatively, to determine that otherwise eligible individuals submitting claims in response to or associated with the unique circumstances and public health threat presented by COVID-19 "cannot pursue other employment for the usual one week's waiting period and that the terms of the statute cannot be met in such an unusual and limited circumstance." 1989 S.C. Op. Att'y Gen. 286 (Oct. 3, 1989). If and to the extent allowed by state and federal law, I further instruct DEW to implement, interpret, and apply the foregoing directives, as necessary and appropriate, in a manner that will facilitate and expedite the processing of claims submitted by eligible individuals who have suffered an unanticipated separation from employment, or reduction of hours, as a result of COVID-19. Subject to any further clarification or guidance by DEW, and to the maximum extent permitted by state and federal law, this Section shall apply to claims submitted between March 15, 2020, and April 18, 2020, by individuals who have suffered an unanticipated separation from employment, or reduction of hours, as a result of COVID-19.

C. I hereby authorize DEW, to the extent allowed by state and federal law, to exercise any statutory or regulatory authority to extend the deadline for employers to pay unemployment insurance taxes on first quarter (Q1) 2020 wages until June 1, 2020, without interest. Notwithstanding any such extension of the deadline to remit payment of unemployment insurances taxes, DEW shall still require employers to file any applicable wage reports by April 30, 2020, so as to ensure that the State has sufficient data to evaluate current workforce conditions and needs.

Section 3. Emergency Procurement Authorization

To expedite the State of South Carolina's continued preparation for and response to the ongoing emergency conditions related to COVID-19 and to facilitate the prompt procurement of any critical resources, supplies, and personnel identified and deemed necessary in connection with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby authorize and direct state agencies and departments to use the emergency procurement procedures set forth in section 11-35-1570 of the South Carolina Code of Laws, as amended, and any regulations issued pursuant thereto, as necessary and appropriate, to facilitate and expedite acquisition of any critical resources during the State of Emergency.

B. I hereby suspend, in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law, any existing procurement-related regulations "if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency."

Section 4. Regulatory Flexibility for Emergency Healthcare Measures

To prepare for and respond to the ongoing and potential impacts associated with COVID-19 on the provision of critical healthcare services to the people of the State of South Carolina, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby authorize and direct DHEC to suspend, for the duration of the present emergency, pursuant to Regulation 61-112 of the South Carolina Code of Regulations, any necessary and applicable provisions of Regulations 61-15 and 61-16, which restrict the use of unlicensed beds or space, the conversion of single and double occupancy patient rooms to account for higher patient capacity, or the establishment of wards, dormitories, or other spaces not designated as patient rooms.

B. I hereby suspend the monetary thresholds set forth in Section 102 of Regulation 61-15 of the South Carolina Code of Regulations for items requiring Certificate of Need Review, to the extent necessary and applicable, so as to permit healthcare facilities to make those capital expenditures and acquire medical equipment deemed necessary to prevent, diagnose, treat, or monitor the progression of COVID-19.

C. I further direct DHEC to suspend certain sections of the South Carolina Health Plan addressing health services requiring Certificate of Need Review, as DHEC deems necessary and appropriate, to allow a healthcare facility to provide temporary health services to adequately care for patients that may be affected by COVID-19. Healthcare facilities shall address any such requests pursuant to this Section to DHEC and coordinate with DHEC regarding the same.

Section 5. Public Safety and Enforcement

To maintain peace and good order during the State of Emergency, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby direct any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency, to include vigorously enforcing the laws of this State pertaining to, *inter alia*, looting, robbery, theft, and acts of violence in accordance with sections 1-3-410, 1-3-430, and 1-3-440 of the South Carolina Code of Laws and other applicable law.

B. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

C. In addition to the foregoing authorities, noncompliance with this Order shall be further governed by the provisions of section 16-7-10(A) of the South Carolina Code of Laws.

Section 6. General Provisions

This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and

every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued verbally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 19th DAY OF MARCH, 2020.

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State