State of North Carolina

ROY COOPER

GOVERNOR

August 5, 2020

EXECUTIVE ORDER NO. 155

EXTENSION OF PHASE 2 MEASURES TO CONTROL PUBLIC HEALTH RISKS AND SAVE LIVES IN THE COVID-19 PANDEMIC

Background Statement

The COVID-19 Public Health Emergency

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, and 146-153; and

WHEREAS, more than one hundred twenty-nine thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and over two thousand people in North Carolina have died from the disease; and

The Need to Extend Executive Order No. 141

WHEREAS, hospital administrators and health care providers continue to express concerns that unless the spread of COVID-19 is limited, existing health care facilities and resources may be insufficient to care for those who become sick; and

WHEREAS, slowing and controlling community spread of COVID-19 remains critical to ensuring that the state's healthcare facilities remain able to accommodate those who require medical assistance; and

WHEREAS, the undersigned has taken a series of measures to limit the spread of COVID-19, including requiring safety measures in certain business settings, limiting mass gatherings, closing certain types of businesses and operations, requiring face coverings in many places where people may travel or congregate, and limiting alcoholic beverage sales for onsite consumption; and

WHEREAS, the undersigned has also urged that all people in North Carolina follow social distancing recommendations, including that people should: (i) wear a cloth covering over the nose and mouth, (ii) wait six (6) feet apart and avoid close contact, and (iii) wash hands often or use hand sanitizer; and

WHEREAS, the undersigned and the Secretary of Health and Human Services have also directed hospitals, physicians' practices, and other health care entities to undertake significant actions as part of North Carolina's emergency response to address the COVID-19 pandemic; and

WHEREAS, North Carolina's daily case counts of COVID-19, the percentage of COVID-19 tests that are positive, emergency department visits for COVID-19-like illnesses, and hospitalizations for COVID-19 are no longer increasing, but remain at a high level; and

WHEREAS, to slow the spread of COVID-19 and reduce COVID-19 morbidity and mortality, it remains necessary to use a phased approach to reduce restrictions on businesses and activities, with some businesses and activities that pose an increased risk for COVID-19 spread remaining closed, since the loosening of each restriction on businesses and activities adds incremental risk and thereby increases the aggregate risk of spread of COVID-19; and

WHEREAS, in this phased approach, the undersigned must factor into the analysis the risk from all activities in and affecting North Carolina, not only activities covered by the Executive Orders; and

WHEREAS, in August 2020, many colleges, universities and K-12 schools, both public and private, will reopen for in-person instruction; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") has issued required COVID-19 guidance for K-12 public schools that includes mandatory safety measures that are intended to prioritize the health and safety of students while also recognizing the essential role that schools play for children, parents, and teachers; and

WHEREAS, the required COVID-19 guidance, which has also been approved by the North Carolina State Board of Education, contains various measures intended to protect the health and safety of students, parents, and teachers, including but not limited to requiring face coverings in most contexts, limiting density in classrooms, and enabling public school units to elect full remote learning at their option; and

WHEREAS, NCDHHS has also issued guidance for institutions of higher education that includes measures to protect the health and safety of students, staff, and professors, along with measures to promote behaviors that will reduce the spread of COVID-19 and create a safer environment in residential housing and classrooms; and

WHEREAS, there are many public health benefits, economic benefits, and societal benefits to reopening K-12 schools, colleges, and universities for in-person instruction, but these in-person gatherings of students, staff, teachers, and professors will increase the risk of COVID-19 spread, even after all health and safety measures are put in place; and

WHEREAS, to balance out this additional risk, it is necessary to continue to restrict certain kinds of businesses and operations, so that North Carolina can continue to have a safe margin for

North Carolina's health care facilities to have sufficient capacity and resources to care for those who become sick; and

WHEREAS, these trends and considerations require the undersigned to continue the measures of Executive Order No. 141, as amended by Executive Order Nos. 147, 151, and 152, to slow the spread of this virus during the pandemic; and

WHEREAS, should there be an increase in the percentage of emergency department visits that are due to COVID-19 like illness, an increase in the daily number of laboratory-confirmed cases, an increase in the positive tests as a percent of total tests, or an increase in COVID-19-related hospitalizations that threaten the ability of the health care system to properly respond, or should the State's ability to conduct testing and tracing be compromised, it may be necessary to reinstate certain restrictions so as to protect the health, safety, and welfare of North Carolinians; and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.23 in conjunction with N.C. Gen. Stat. §§ 75-37 and 75-38, the undersigned may issue a declaration that shall trigger the prohibitions against excessive pricing during states of disaster, states of emergency or abnormal market disruptions; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact, thus needed control cannot be imposed locally; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads

across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments, and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict other activities or conditions, the control of which may be reasonably necessary to maintain order and protect lives or property during a state of emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(1), when the undersigned imposes the prohibitions and restrictions enumerated in N.C. Gen. Stat. § 166A-19.31(b), the undersigned may amend or rescind the prohibitions and restrictions imposed by local authorities; and

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the statutes listed above and in Executive Order Nos. 141, 147, and 151, **IT IS ORDERED**:

Section I. Extension and Amendment of Phase 2 Order.

Executive Order No. 141 shall remain in effect, as amended, until 5:00 pm on September 11, 2020. The effective date provisions of Executive Order Nos. 141, 147, and 151 are amended to have those orders continue in effect through the above-listed time and date.

Section II. Technical Amendment to Remove Reference to a Previous Expiration Date.

Section 6(F)(3) of Executive Order No. 141 is amended to read as follows:

3. **Relationship to Other Executive Orders.** Subdivisions 1 and 2(a) of this Subsection completely replace Subsections (C) and (D) of Section 2 of Executive Order No. 130. Subsections 2(A)-2(B) and 2(E)-(H) of Executive Order No. 130 and Section 3 of Executive Order No. 139 shall continue in effect as specified in Executive Order No. 152 and any subsequent executive orders.

Section III. Update to Provision on Student Nutrition.

Section 10(A) of Executive Order No. 141 is amended to read as follows:

A. **School and Health Officials to Continue Efforts.** NCDHHS, the North Carolina Department of Public Instruction, and the North Carolina State Board of Education are directed to continue to work together during this State of Emergency to maintain and implement measures to provide for the health, nutrition, safety, educational needs, and well-being of children being taught by remote learning.

Section IV. Extension of Price Gouging Period.

Section 11 of Executive Order No. 141 is amended to read as follows:

Pursuant to N.C. Gen. Stat. § 166A-19.23, the undersigned extends the prohibition against excessive pricing, as provided in N.C. Gen. Stat. §§ 75-37 and 75-38, from the issuance of Executive Order No. 116 through 5:00 pm on September 11, 2020.

The undersigned further hereby encourages the North Carolina Attorney General to use all resources available to monitor reports of abusive trade practices towards consumers and make readily available opportunities to report to the public any price gouging and unfair or deceptive trade practices under Chapter 75 of the North Carolina General Statutes.

Section V. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section VI. Effective Date.

This Executive Order is effective at 5:00 pm on August 7, 2020. This Executive Order shall remain in effect through 5:00 pm on September 11, 2020 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

Notwithstanding any provision of this Section and Section 16 of Executive Order No. 141, any statewide standing order for COVID-19 testing issued by the State Health Director under Section 9.5 of Executive Order No. 141 (as added by Section III of Executive Order No. 147) shall remain in effect for the duration of the State of Emergency unless specifically repealed, replaced, or rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 5th day of August in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State