CHRISTOPHER T. SUNUNU
Governor

STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

STATE OF NEW HAMPSHIRE
BY HIS EXCELLENCY
CHRISTOPHER T. SUNUNU, GOVERNOR

Emergency Order #76 Pursuant to Executive Order 2020-04 as Extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21 and 2020-23

Suspension of certain provisions of RSA 141-C:20-f and NH Administrative Rule He-P 307 to comply with CDC requirements for vaccine data

WHEREAS, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, an Order declaring a State of Emergency due to the Novel Coronavirus (COVID-19) and pursuant to statutory authority under NH RSA 4:45; and

WHEREAS, in the days since the Governor declared a State of Emergency, the COVID-19 outbreak in New Hampshire has expanded significantly; and

WHEREAS, the New Hampshire Department of Health and Human Services (DHHS), Division of Public Health (DPHS) has found that community-based transmission of COVID-19 continues to increase in the state and within all of its counties; and

WHEREAS, to date, a vaccine for COVID-19 has not been available; however, it is expected that various pharmaceutical manufacturing companies will soon be able to release and distribute at least one FDA approved vaccine for COVID-19; and

WHEREAS, in accordance with NH RSA 21-P:53, DPHS, during the State of Emergency, is authorized to accept COVID-19 vaccine from the Centers for Disease Control (CDC) and serve as the state provider when distributing vaccine, pursuant to a Standing Order in accordance with NH RSA 141-C:15-a, to traditional health care providers and other entities administering the vaccine. In accordance with NH Administrative Rule Med 501.02(d) and the Standing Order, DPHS, as the provider, will be required to maintain a medical record for each vaccination event; and

WHEREAS, it is necessary for DPHS to collect, store, and share comprehensive data relating to vaccination events with the CDC, as the distributor and funder of the vaccine. CDC will require

DPHS to account for all doses received by state, and has provided DPHS with a list of certain data elements in order to ensure: correct matching of the second dose, and to ensure both dose number and product are consistent with eventual guidance from the Advisory Committee on Immunization Practices (ACIP), to create an accurate accounting of administration of vaccines, to identify vaccine and patient information in the event of adverse events to address safety issues, and to assess the efficacy of vaccine among different demographic groups within the population. (https://www.hhs.gov/sites/default/files/national-governors-association-questions-on-vaccine-distribution-planning.pdf); and

WHEREAS, CDC will also require data from all states, including New Hampshire, to ensure proper vaccine allocation, ordering, distribution, and inventory management (https://www.cdc.gov/vaccines/imz-managers/downloads/COVID-19-Vaccination-Program-Interim_Playbook.pdf); and

WHEREAS, DHHS is required to share data with the CDC in accordance with grant funding requirements for vaccine distribution. In accordance with 45 CFR 75.322(d)(1), the federal government has the right to obtain, reproduce, publish, or otherwise use the data produced under a federal award; and

WHEREAS, DHHS has executed a data sharing agreement with the CDC to protect any identifiable data. Identifiable data will be available to CDC or other federal agencies for tracking and reconciling COVID-19 vaccine administration data from disparate data sources in the event that the two doses are not administered by the same entity. CDC is exploring solutions that allow information exchange on vaccine administration, while preserving and protecting PII and PHI. (https://www.hhs.gov/sites/default/files/national-governors-association-questions-on-vaccine-distribution-planning.pdf); and

WHEREAS, the New Hampshire Immunization Information System (NHIIS) is the only operational system that can enable DPHS to comply with the complex provider, distributor, and administrator data collection, transmission, and storage that will be required to report information on COVID-19 vaccine data elements to CDC in a timely fashion. This will enable CDC to reliably account for COVID-19 vaccinations and analyze vaccination coverage by demographic factors once vaccine supplies are available. (https://www.hhs.gov/sites/default/files/national-governors-association-questions-on-vaccine-distribution-planning.pdf); and

WHEREAS, DPHS has submitted a statewide COVID-19 Vaccination Plan, which includes distribution of a COVID-19 vaccine for administration to every person in the State of New Hampshire as soon as such a vaccine becomes available; and

WHEREAS, it is in the best interests of the people of the State of New Hampshire to have timely and equitable access to COVID-19 vaccine to end the Pandemic's impact on persons and businesses in the state; and

WHEREAS, timely and effective distribution of the COVID-19 Vaccine will require coordination and sharing of information, including specific details concerning the amount of vaccine required, the number and efficacy of vaccine doses administered, the statewide and

regional areas in most need of vaccine due to vulnerable or high-risk populations, need for administration in long-term care facilities, and information relating to coverage gaps; and

WHEREAS, a comprehensive COVID-19 Vaccination plan cannot be effectively and efficiently managed without the full use of the NHIIS, which is a secure database able to coordinate, store and calculate the required information for safe, efficient and coordinated distribution and administration of the COVID-19 Vaccine; and

WHEREAS, in order to accurately and efficiently ensure equitable COVID-19 Vaccine distribution and implementation, and because there is no alternative secure storage for COVID-19 Vaccine data, it is important for the NHIIS to contain all information relating to medical record and vaccination events for every person who receives COVID-19 vaccine; and

WHEREAS, for the reasons outlined above, it is critical during this State of Emergency for the NHIIS to contain information for every medical record and vaccination event related to COVID-19, and therefore to temporarily suspend the opt out and withdrawal provisions contained in the current laws governing the NHIIS; and

WHEREAS, the COVID-19 medical record and vaccine event information contained in the NHIIS shall be used to ensure that patients receive all recommended COVID-19 vaccines in a timely manner by providing access to the patient immunization record, to improve immunization coverage rates by facilitating notice to patients of overdue or upcoming immunizations, and to control COVID-19 disease by assisting in the identification of patients who require immediate immunization during the current State of Emergency.

Now therefore, pursuant to Section 18 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21 and 2020-23, and notwithstanding the provisions of NH RSA 141-C:20-f and NH Administrative Rule He-P 307, it is hereby ordered, effective immediately, and for the duration of the State of Emergency, that:

1. All health care providers administering COVID-19 vaccine shall be required to participate in the NH Immunization Information System (NHIIS).

2. All health care providers shall be required to report all COVID-19 vaccination events to the NHIIS within 24 hours of vaccine administration.

3. For the purposes of patient reporting of COVID-19 vaccination events to the NHIIS, the provisions of NH RSA 141-C:20-f, paragraphs II-III and IX and NH Administrative Rules He-P 307.05-307.07 are hereby suspended for the duration of the State of Emergency.

4. All patient level information relating to vaccine administration shall be stored in the NHIIS as a medical record.

5. The suspension of the provisions of NH RSA 141-C:20-f, paragraphs II-III and IX and NH Administrative Rules He-P 307.05-307.07 shall only apply to administration of COVID-19 vaccine, and not to other vaccines.

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6. Once the State of Emergency declared in Executive Order 2020-04 has ended, patients may follow the process outlined in NH RSA 141-C:20-f and NH Administrative Rule He-P 307 for withdrawal or removal of COVID-19 vaccine information from the NHIIS.

7. All other provisions of NH RSA 141-C:20-f and NH Administrative Rule He-P 307 shall remain in full force and effect, unless they conflict with this Order, in which case this Order shall control.

Given under my hand and seal at the Executive Chambers in Concord, this 11th day of December, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.

Chris T. Sununu

GOVERNOR OF NEW HAMPSHIRE

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