State of North Carolina

ROY COOPER

GOVERNOR

September 21, 2020

EXECUTIVE ORDER NO. 165

EXTENDING CERTAIN HEALTH AND HUMAN SERVICES PROVISIONS IN PREVIOUS EXECUTIVE ORDERS AND DELEGATION OF AUTHORITY

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 (the "Declaration of a State of Emergency") 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 to provide for the health, safety, and welfare of residents and visitors located in North Carolina; 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 l, 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, 146-153, 155-157, and 161-164; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") has confirmed the number of cases of COVID-19 in North Carolina continues to rise and has identified widespread community transmission of the virus; and

WHEREAS, more than 193,000 people in North Carolina have had laboratory-confirmed cases of COVID-19, and over 3,200 people in North Carolina have died from the disease; and

WHEREAS, in Executive Order Nos. 130 and 139, the undersigned, with the concurrence of the Council of State, determined that the Secretary of the Department of Health and Human Services required authority to modify or waive enforcement of certain legal constraints or regulations which restrict the immediate relief of human suffering; and

WHEREAS, certain provisions of Executive Order Nos. 130 and 139 were extended by Executive Order Nos. 144, 148, and 152, but these provisions are set to expire unless the undersigned takes further action; and

WHEREAS, it is anticipated that the need for these measures will continue for at least a period of sixty (60) days; and

WHEREAS, since the declaration of a state of emergency in Executive Order No. 116, North Carolina has accumulated increased personal protective equipment ("PPE") for health care workers and first responders, developed health care protocols and procedures for the treatment of COVID-19, and adopted personal recommendations to promote social distancing and reduce transmission of COVID-19; and

WHEREAS, the Secretary of NCDHHS has been working closely with long term care facility industry leaders, advocates, and families to continue efforts to mitigate the spread of COVID-19, and has the expertise to determine necessary restrictions and requirements for long term care facilities to provide safe environments of care for staff and residents; and

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 any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(4) gives the undersigned the authority to "cooperate and coordinate" with the President of the United States, and the orders and authorizations below cooperate and coordinate with Centers for Medicare and Medicaid Services ("CMS") and utilize the flexibility provided in CMS waiver letters; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7) the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of departments, offices, and agencies of the state in response to the emergency; 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(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5) the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; 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 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. § 166A19.31 (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. § 166A19.31 (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, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30; and

WHEREAS, all the authority granted by this Executive Order is intended to be temporary, and the waivers and modifications of enforcement set out in this Executive Order are intended to extend only through the period where they are needed to address the COVID-19 pandemic.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Extension, Generally.

For the reasons and pursuant to the authority set forth above and in Executive Order Nos. 130, 139, 144, 148, and 152, and to meet the goal of providing human services during the COVID-19 pandemic, the undersigned orders as follows:

A. **Executive Order No. 152.**

Executive Order No. 152 is modified to be in effect until November 20, 2020. Except as specified in Section 2 herein, all references to "September 22, 2020" in Executive Order No. 152 shall be replaced with "November 20, 2020."

B. **Temporary Nature of this Section.**

1. Waivers and modifications under authority of this Section are temporary and shall be effective as set forth in this Executive Order.

2. The undersigned delegates to the Secretary of NCDHHS authority to reimpose any regulations, policies, or guidance that have enforcement waived or modified under this Section.

Section 2. Expiration of Changes to the Program of All-Inclusive Care for the Elderly (PACE).

Notwithstanding Section 1 herein, or any other provision of Executive Orders Nos. 130, 139, 144, 148, or 152, the second sentence of Section 1(A) of Executive Order No. 152 is modified to read, "Section 6(A) of Executive Order No. 130, which was extended by Executive Order No. 144, shall expire on September 22, 2020."

Section 3. Delegation of Authority on Long Term Care Facilities.

Section 2 of Executive Order No. 152 is amended to read as follows:

Pursuant to N.C. Gen. Stat. § 166A-19.10(b)(3), the undersigned delegates to the Secretary of the Department of Health and Human Services the authority under N.C. Gen. Stat. § 166A-19.30(c), in conjunction with N.C. Gen. Stat. § 166A-19.31 (b)(l),(2), and (5), to prohibit and restrict activities and operations of long term care facilities, including skilled nursing facilities, combination homes, adult care homes, mental health group homes, and intermediate care facilities for individuals with intellectual disabilities, which may be reasonably necessary to maintain order and protect lives and property during this state of emergency. This Section will remain in effect for the duration of the State of Emergency as declared in Executive Order No 116, unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Section.

Section 4. Distribution.

I hereby order that this Executive Order be: (l) 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 5. Effective Date.

This Executive Order is effective immediately. Except as set forth expressly above, this Executive Order shall remain in effect until November 20, 2020 unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

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 21st day of September in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox
Chief Deputy Secretary of State