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Secretary of State
Tre Hargett

STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

No. 77

AN ORDER TO FACILITATE THE CONTINUED RESPONSE TO COVID-19 BY EXTENDING EXECUTIVE ORDER NO. 73, AS AMENDED

WHEREAS, ongoing regulatory flexibility and other provisions in Executive Order No. 73, as otherwise amended herein, are required to address the continuing effects, risks, and persistent negative economic conditions in order to assist Tennessee's citizens, health care systems, industries, small businesses, local and state governments, and religious and non-profit institutions combat and recover from the long-term effects of COVID-19; and

WHEREAS, given the continuing effects from COVID-19, Tennesseans have a personal responsibility to protect themselves and others by following health guidelines to slow the spread of this virus, and therefore, all venues, employers, businesses, and organizations should be mindful of the guidance issued by the Governor's Economic Recovery Group (i.e., the Tennessee Pledge), which are available at the following web address and may be periodically updated: https://www.tn.gov/governor/covid-19/economic-recovery.html; and

WHEREAS, in addition to the other powers granted by law, Tennessee Code Annotated, Section 58-2-107, provides, among other things, that during a state of emergency, the Governor is authorized to suspend laws and rules if necessary to cope with an emergency, utilize all available state and local resources needed to combat an emergency, and take measures concerning the conduct of civilians; and

WHEREAS, pursuant to this authority and the general emergency management powers of the Governor under law, such measures, including the measures contained herein, are necessary to facilitate the response to the ongoing effects of COVID-19.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, do hereby declare a continuing state of emergency and major disaster in order to facilitate the response to COVID-19 and accordingly extend and order the following:

A. **Restated provisions that originated in Executive Order No. 36 (as amended in other orders or herein) and similar provisions added in this Order:**

1. Activation of Tennessee Emergency Management Plan. The Commissioner of Health or her designee, in conjunction with the Director of the Tennessee Emergency Management Agency (TEMA) or his designee, shall implement the Tennessee Emergency Management Plan (TEMP) and all applicable annexes to coordinate the State's response to COVID-19.

2. Out-of-state health care providers may practice in Tennessee. The relevant provisions of Tennessee Code Annotated, Titles 63 and 68, and related rules are hereby suspended to the extent necessary to give the Commissioner of Health the discretion to allow a health care professional who is licensed in another state, and who would otherwise be subject to the licensing requirements under Title 63 or Title 68, to engage in the practice of such individual's profession in Tennessee, if such individual is a health care professional who is assisting in the medical response to COVID-19, including treating routine or other medical conditions. The Commissioner of Health shall provide the requisite form for practicing under this Paragraph on the Department of Health's Health Professional Boards webpage.

7.3 Retired medical professionals can easily reenter the health care workforce. The provisions of Tennessee Code Annotated, Titles 63 and 68, and related rules and policies are hereby suspended to the extent necessary to give the Commissioner of Health the authority to grant a license, certificate, or registration to a health care professional, such as a retired health care professional, who has been out of practice for a period of time without requiring that individual to demonstrate continued competency or submit to an interview before a licensing board or other licensing authority, provided that the individual satisfies all other requirements for licensure, certification, or registration.

7.4 In-person and live continuing education requirements are suspended for health care professionals. The provisions of the rules and policies adopted pursuant to Tennessee Code Annotated, Titles 63 and 68, regarding continuing education credits and hours for health care professionals are hereby suspended to the extent necessary to suspend the requirement that any continuing education credits and hours be obtained in-person or at a live event for credit and hours earned from March 12, 2020, through the expiration of this Order. Such rules and policies are further suspended to the extent necessary to allow the Commissioner of Health to adopt policies necessary to comply with the suspension of in-person and live continuing education requirements, and the Commissioner of Health is hereby directed to adopt policies to that effect. Nothing in this provision suspends the requirements that health care professionals obtain a certain number of continuing education credits or hours.

7.5 Laboratory inspections are suspended to allow for immediate COVID-19 testing. The provisions of Tenn. Comp. R. & Regs. 1200-06-03-.03(3) and 1200-06-03-

.04(2) are hereby suspended to the extent necessary to give the Commissioner of the Department of Health the authority to suspend any required onsite inspections of laboratories to the extent necessary to allow laboratories to immediately begin testing for COVID-19.

7.6 Health care licensing inspections and investigations are suspended to increases resources available to fight COVID-19 and to protect public health. The provisions of Tennessee Code Annotated, Titles 63 and 68, and related rules and policies are hereby suspended to the extent necessary to suspend any requirement that the Department of Health conduct inspections or investigations of a licensee, including, but not limited to, complaint investigations, routine surveys, and site visits. However, the Department of Health retains the authority to conduct any inspection or investigation when, in the Department's sole discretion, the public health, safety, or welfare necessitates such inspection or investigation.

7.9 Inspections of health care facilities are suspended. The provisions of Tennessee Code Annotated, Section 68-11-210(a)(1), are hereby suspended to the extent necessary to suspend the requirement that the Department of Health conduct inspections of facilities applying for licensure if the applicant facility is physically located in the same location as another licensed facility where patients have been seen within the thirty (30) days preceding the submission of the application. In instances where the Department of Health elects to not inspect a facility applying for licensure, such provisions requiring a facility applying for licensure to be inspected are hereby suspended.

7.10 Inspections of medical laboratories are suspended. The provisions of Tennessee Code Annotated, Section 68-29-106, are hereby suspended to the extent necessary to suspend the requirement that the Department of Health conduct inspections for medical laboratory applicants for licensure if the applicant laboratory is physically located in the same location where another licensed medical laboratory was located within the thirty (30) days preceding the submission of the new application. In instances where the Department of Health elects to not inspect a medical laboratory applying for licensure, such provisions requiring a medical laboratory applying for licensure to be inspected are hereby suspended.

7.13 Live human examinations are suspended for dentistry applicants. The requirements under Tennessee Code Annotated, Title 63, Chapter 5, and Tenn. Comp R. & Regs. 0460-02-.05 that persons applying for licensure as a dentist complete a live human patient examination component is hereby suspended to permit the Board of Dentistry to grant licensure to persons graduating in 2020 or 2021 from a dental school accredited by the Commission on Dental Accreditation (CODA), if such persons have completed the other licensure requirements, met all of the requirements for competency promulgated by the CODA, and been certified by the dean of their CODA-accredited dental school as qualified, competent, and fit to practice dentistry.

7.16 Nursing graduates may practice under supervision without examination. The provisions of Tennessee Code Annotated, Title 63, Chapters 6 and 7, and related rules and policies are hereby suspended to the extent necessary to give the Commissioner of Health the authority and discretion to allow a person who has graduated on or after December 1, 2019, from an approved registered or practical nursing education program, and who has applied and fulfilled all other requirements for licensure as a nurse but has yet to take the National Council Licensure Exam (NCLEX), to practice nursing under the supervision of a licensed registered nurse.

8. Pharmacists can process prescriptions remotely. The relevant portions of Tennessee Code Annotated, Title 63, Chapter 10, and Tenn. Comp. R. & Regs. 1140-02-.01 through Tenn. Comp. R. & Regs. 1140-02-.02 are hereby suspended to the extent necessary to allow pharmacy technicians and pharmacists to complete computer-based processing of prescriptions at alternative locations, including from the residence of the pharmacy technician or pharmacist. Such computer-based processing shall be conducted utilizing adequate security to ensure all aspects of the Health Insurance Privacy and Accountability Act of 1996 are followed. No laws pertaining to licensed pharmacy practice sites, the storage of drugs, recordkeeping, or dispensing processes are waived or limited by this Order.

8.1 Each pharmacist can supervise more pharmacy technicians. The provisions of Tenn. Comp. R. & Regs. 1140-02-.02(7) are hereby suspended so that there is no restriction on the ratio of pharmacy technicians to pharmacists while this Order is in effect. All statutes and rules regarding the supervision of a pharmacy technician by a licensed pharmacist remain in full force and effect, including, but not limited to, the requirement that a licensed pharmacist supervise, direct, and verify the accuracy of all pharmacy technician functions pursuant to Tenn. Comp. R. & Regs. 1140-02-.02(9).

9. Degree holders in science fields can work as laboratory personnel under supervision. The relevant portions of Tennessee Code Annotated, Title 68, Chapter 29, and related rules are hereby suspended to the extent necessary to give the Commissioner of Health the discretion to allow individuals required to be licensed under Title 68, Chapter 29, as medical laboratory technologists, medical laboratory technicians, or special analysts to work without a license while employed by a licensed medical laboratory and working under the supervision of a medical laboratory director; provided, that, such an individual has obtained a bachelor's degree in a biology or chemistry science field. The Commissioner of Health shall provide the requisite form for practicing under this Paragraph on the Department of Health's Health Professional Boards webpage.

9.1 Medical laboratory directors can monitor facilities remotely. The provisions of Tenn. Comp. R. & Regs. 1200-06-01-.20(5)(c) are hereby suspended to the extent necessary to suspend the requirement that a medical laboratory director make certain periodic in-person, onsite visits to the facilities the director oversees, so long

as the director utilizes other technological means of maintaining and exercising oversight.

9.2 Pre-license, graduate or doctoral level mental or behavioral health professionals can provide telehealth services under supervision. The relevant provisions of Tennessee Code Annotated, Titles 63 and 68, and related rules are hereby suspended to the extent necessary to give the Commissioner of Health the authority to allow persons who have completed or are actively enrolled in a program to obtain a master's degree or doctoral degree in a behavioral or mental health field, or in a field of study required for a license allowing the individual to diagnose behavioral or mental health disorders, to treat diagnosed behavioral or mental health conditions without a license and through use of telemedicine services; provided, that the person is, at all times, supervised by a person licensed under Title 63 or Title 68, Chapter 24 with authorization to diagnose a behavioral or mental health condition. The Commissioner of Health shall provide the requisite form for practicing under this Paragraph 9.2 on the Department of Health's Health Professional Boards webpage.

9.3 Medical laboratory personnel can work remotely. The provisions of Tenn. Comp. R. & Regs. 1200-06-03-.02(1)(b) are hereby suspended to allow medical laboratory personnel to remotely review electronic data and report laboratory results without having a separate laboratory license for each remote location. Such personnel must be employed by a licensed medical laboratory and working under the supervision of a laboratory director. This suspension does not otherwise alter or amend any licensee's scope of practice or recordkeeping requirements.

9.4 Pre-license, graduate or doctoral level audiology and speech language pathology professionals can provide telehealth services under supervision. The relevant provisions of Tennessee Code Annotated, Title 63, and related rules are hereby suspended to the extent necessary to give the Commissioner of Health the authority to allow persons who have completed or are actively enrolled in a program to obtain a master's degree or doctoral degree in the field of audiology or speech language pathology to practice without a license and through use of telemedicine services; provided, that the person is, at all times, supervised by a person licensed under Title 63 in that field. The Commissioner of Health shall provide the requisite form for practicing under this Paragraph 9.4 on the Department of Health's Health Professional Boards webpage.

10. Increased number of hospital beds available for COVID-19 patients. The provisions of Tennessee Code Annotated, Section 68-11-1607, are hereby suspended to the extent necessary to allow hospitals, nursing homes, and home health agencies that would otherwise be subject to certificate of need requirements to temporarily increase their number of licensed hospital beds at any location or temporarily establish hospital, nursing home, home-based, and diagnostic services at any location, if necessary for the treatment of COVID-19 patients, as well as to the

extent necessary to facilitate activity authorized by the provisions of this Order and any subsequent order concerning COVID-19.

10.2 Medical professional staffing flexibility is permitted pursuant to an approved plan to relieve the capacity strain on certain staffing functions. In order to relieve the capacity strain on bedside care and support resulting from staffing shortages (nurses, respiratory therapists, etc.), additional temporary regulatory flexibility measures are necessary to cope with the emergency. To this end, the provisions of Title 63 and Title 68, Chapter 140, are hereby suspended to the extent necessary to authorize professionals licensed under Title 63 or Title 68, Chapter 140, to perform tasks outside of their licensed scope of practice if such tasks are performed in a hospital licensed under Title 68 pursuant to a facility-specific, COVID-19-related plan of delegation that has been submitted by the facility's chief medical officer and approved by the Commissioner of Health or the Commissioner's designee. Such a plan of delegation must include the specific types of licensees covered, the specific tasks outside of their licensed scope of practice that are permitted, and the specific circumstances and directives under which such tasks are permitted. The Commissioner or the Commissioner's designee may approve such plan subject to conditions and may rescind such approval in the Commissioner's or Commissioner's designee's sole discretion. For purposes of regulation and disciplinary action, licensees performing tasks pursuant to this provision remain subject to regulation and disciplinary action as if they were acting within their licensed scope of practice.

10.3 Discretion to utilize National Guard and State Guard members in connection with certain health care and emergency services operations. This Paragraph 10.3 is issued for the limited purpose of authorizing personnel recognized under Tennessee Code Annotated, Sections 58-1-203, 58-1-204, and 58-1-402 (collectively, "Personnel"), to serve in certain health care and emergency services roles to reduce system capacity strain resulting from COVID-19. Namely, Personnel may: (1) perform authorized diagnostic testing for COVID-19 in health care settings, including but not to limited to hospitals, emergency departments, and alternate care sites (collectively, "Facilities"); (2) perform authorized nursing and other functions in Facilities; and (3) operate public or privately owned, permitted ambulance service vehicles with a licensed service. Accordingly, the following provisions are hereby suspended to the extent necessary to facilitate this Paragraph 10.3: Tennessee Code Annotated, Titles 63 and Title 68, and related rules, with respect to licensure, continuing education, and other requirements for Personnel or Facilities utilizing Personnel; Title 68, Chapter 140, Part 3, with respect to Personnel and licensed ambulance services utilizing Personnel; and any other state or local law, order, rule, or regulation that would limit the application of this Paragraph 10.3 is hereby suspended to the extent necessary to facilitate this Paragraph 10.3. This Paragraph 10.3 is subject to the following conditions:

a. No Personnel shall operate under this Paragraph 10.3 unless designated by the Adjutant General upon request or order of the Governor;

b. Personnel operating pursuant to this Paragraph 10.3 shall have the appropriate training or skills in the area(s) pertaining to their designations;

c. The Adjutant General and Commissioner of Health, or their designees, shall determine the Facilities to which Personnel are assigned, based on need and other reasonable factors, in their sole discretion;

d. Any Facility to which Personnel are assigned must submit, in writing to the Commissioner of Health, the responsibilities and tasks that Personnel will be undertaking while operating pursuant to this Paragraph 10.3;

e. A list of Personnel designated to operate under this Paragraph 10.3 and the Facility or setting in which such Personnel will be operating shall be provided to the Commissioner of Health by the Adjutant General, and this list shall be updated from time to time as necessary;

f. Any authority, duties, or scope of practice suspensions extended to Personnel pursuant to this Paragraph 10.3 shall terminate and be of no further force and effect upon the expiration or termination of Paragraph 10.3 or other order of the Governor to that effect; and

g. This Paragraph 10.3 shall not affect the requirements and provisions of the suspended statutory and rule provisions with respect to any other person or facility.

10.4 Regulatory flexibility for ambulance transport services. In order to relieve the capacity strain on emergency medical services, temporary regulatory flexibility measures are necessary for nonemergency ambulance transport services. To this end, the provisions of Tennessee Code Annotated, Title 68, Chapter 140, and Tenn. Comp. R. & Reg. 1200-12-01-.14(3)(c)(2)(iii) & (iv) are hereby suspended to the extent necessary to authorize that Level 3 transports may be staffed with one AEMT and Level 4 transports may be staffed with one EMT, provided that there is an ambulance operator in addition to the AEMT or EMT who satisfies the ambulance driver requirements of Tenn. Comp. R. & Reg. 1200-12-01-.10. All other statutes and rules regarding patient transport services remain in full force and effect.

10.5 Delegation of nursing tasks to medical assistants under the supervision of a registered nurse is permitted to relieve the capacity strain on vaccination and other staffing functions. In order to ensure prompt administration of a COVID-19 vaccination and relieve the capacity strain on bedside care and support resulting from staffing shortages due to COVID-19, additional temporary regulatory flexibility measures are necessary to cope with the emergency. The provisions of Title 63 and related rules are hereby suspended to the extent necessary to authorize a registered nurse, licensed in Tennessee or working in Tennessee on a multi-state privilege to practice, to delegate to medical assistants certified or registered by the

American Association of Medical Assistants, American Medical Technologists, National Association for Health Professionals, National Center for Competency Testing, or National Healthcareer Association tasks that would normally be within the practical nurse scope of practice, including, but not limited to, administration of COVID-19 vaccinations, under the supervision of the registered nurse. Tasks delegated to certified medical assistants and performed under the supervision of the delegating registered nurse are required to have been ordered and authorized by a Tennessee licensed practitioner with prescriptive authority.

10.6 Behavioral health inpatient psychiatric, residential, and crisis care staffing flexibility is permitted pursuant to an approved plan to relieve the capacity strain on certain staffing functions. In order to relieve the capacity strain on bedside care and support resulting from staffing shortages (physician assistants, nurse practitioners, registered nurses, licensed practical nurses, etc.), additional temporary regulatory flexibility measures are necessary to cope with the emergency. To this end, the provisions of Title 33, Title 63, and Title 68, Chapter 140, and related rules are hereby suspended to the extent necessary to authorize professionals licensed under Title 63 or Title 68, Chapter 140, to perform tasks outside of their licensed scope of practice or restricted under Title 33 if such tasks are performed in an inpatient psychiatric facility, in a behavioral health residential facility, or by a behavioral health crisis services provider licensed under Title 33 pursuant to a facility or provider-specific, COVID-19-related plan of delegation that has been submitted by the facility's or provider's chief medical or chief executive officer and jointly approved by the Commissioner of Mental Health and Substance Abuse Services or the Commissioner's designee and the Commissioner of Health or the Commissioner's designee. Such approval by either Commissioner or Commissioner's designee may be subject to conditions or may be subsequently rescinded in that person's sole discretion. Such a plan of delegation must include the specific types of licensees covered, the specific tasks outside of their licensed scope of practice or restricted under Title 33 that are permitted, and the specific circumstances and directives under which such tasks are permitted. For purposes of regulation and disciplinary action, licensees performing tasks pursuant to this provision remain subject to regulation and disciplinary action as if they were acting within their licensed scope of practice.

10.7 Health care student staffing flexibility is permitted in inpatient acute care and rehabilitation and emergency settings pursuant to an approved plan to relieve the capacity strain on certain staffing functions. In order to relieve the capacity strain on bedside care resulting from staffing shortages related to inpatient acute care, inpatient behavioral health, and emergency care, additional temporary regulatory flexibility measures are necessary to cope with the emergency. To this end, the provisions of Title 63 and Title 68, Chapter 140, and related rules are hereby suspended to the extent necessary to authorize students actively enrolled in a graduate school program or an undergraduate respiratory care program, the educational standards of which meet the training requirements for a license under Title 63 or Title 68, Chapter 140, to perform supervised tasks within the licensed

scope of practice of such a license, if such tasks are performed in an inpatient acute care or inpatient rehabilitation setting or emergency department pursuant to a facility-specific, COVID-19-related plan of delegation that has been submitted by the facility's chief medical officer and approved by the Commissioner of Health or the Commissioner's designee. Such a plan of delegation must include the specific types of programs in which a student must be enrolled to perform tasks in accordance with this Paragraph 10.7, the specific tasks within the relevant scope of practice that the student is permitted to perform, and the specific circumstances and directives under which such tasks are permitted. The Commissioner or the Commissioner's designee may approve such plan subject to conditions and may rescind such approval in the Commissioner's or Commissioner's designee's sole discretion. Students performing tasks pursuant to this Paragraph 10.7 may be subject to disciplinary action upon applying for a license for actions inconsistent with the practice act for the licensed scope of practice in which they are operating.

10.8 Health care student staffing flexibility is permitted in inpatient psychiatric and behavioral health settings pursuant to an approved plan to relieve the capacity strain on certain staffing functions. In order to relieve the capacity strain on bedside care resulting from staffing shortages related to inpatient acute care, inpatient behavioral health, and emergency care, additional temporary regulatory flexibility measures are necessary to cope with the emergency. To this end, the provisions of Title 33, Title 63, and Title 68, Chapter 140, and related rules are hereby suspended to the extent necessary to authorize students actively enrolled in a graduate school program or an undergraduate respiratory care program, the educational standards of which meet the training requirements for a license under Title 63 or Title 68, Chapter 140, to perform supervised tasks within the licensed scope of practice of such a license or restricted under Title 33, if such tasks are performed in an inpatient psychiatric facility, in a behavioral health residential facility, or by a behavioral health crisis services provider licensed under Title 33 pursuant to a facility or provider-specific, COVID-19-related plan of delegation that has been submitted by the facility's or provider's chief medical or chief executive officer and jointly approved by the Commissioner of Mental Health and Substance Abuse Services or the Commissioner's designee and the Commissioner of Health or the Commissioner's designee. Such a plan of delegation must include the specific types of programs in which a student must be enrolled to perform tasks in accordance with this Paragraph 10.8, the specific tasks within the relevant scope of practice or restricted under Title 33 that the student is permitted to perform, and the specific circumstances and directives under which such tasks are permitted. Such approval by either Commissioner or Commissioner's designee may be subject to conditions or may be subsequently rescinded in that person's sole discretion. Students performing tasks pursuant to this Paragraph 10.8 may be subject to disciplinary action upon applying for a license for actions inconsistent with the practice act for the licensed scope of practice in which they are operating.

11. Testing for COVID-19 can occur at more medical laboratory facilities. The provisions of Tenn. Comp. R. & Regs. 1200-06-03-.16 are suspended to allow

testing necessary for the diagnosis, treatment, and containment of COVID-19 to occur at alternate testing sites without prior approval by the Medical Laboratory Board; provided, that laboratories shall notify the Medical Laboratory Board of any such alternate testing sites.

12. Temporary quarantine and isolation facilities may be constructed. The provisions of Tennessee Code Annotated, Section 68-11-202(c)(1)-(8), are hereby suspended to allow for the construction of temporary structures, the plans for which would otherwise be subject to review for new construction, additions, or substantial alterations, as directed by the Commissioner of Health and the Director of TEMA in response to COVID-19; provided, that there shall be inspections of such structures to ensure safety, as necessary.

16.1 Unemployment benefits for persons affected by COVID-19. The provisions of Tennessee Code Annotated, Title 50, Chapter 7, and related rules are hereby suspended to the extent necessary to allow the Commissioner of Labor and Workforce Development to comply with, and maximize the benefits to the State from, federal legislation related to emergency unemployment benefits, including any extension of, or modification to, the Coronavirus Aid, Relief, and Economic Security Act enacted on March 27, 2020, as Public Law No. 116-136.

21. Board of Parole may modify procedures to protect public health. The provisions of Tennessee Code Annotated, Section 40-28-118(a) and (b), Section 40-28-121(b) and (d), Section 40-28-122(a), (c), and (f), and Section 40-35-503(d), (e), (f), and (h), requiring the Tennessee Board of Parole to take certain actions and conduct certain proceedings, the provisions of Tennessee Code Annotated, Section 40-28-502(a)(1), requiring that hearings be open to the public, the notification requirements of Tennessee Code Annotated, Section 40-28-505(b), (c), (e), and (g), and any related provisions of Tenn. Comp. R. & Regs. 1100-01-01-.01 through Tenn. Comp. R. & Regs. 1100-01-01-.16 and Board of Parole policies adopted pursuant to Tennessee Code Annotated, Section 40-28-104, are hereby suspended. However, the Board of Parole is directed to use all available processes, alternatives, and technology to maintain continuity of services and hearings to the greatest extent practicable while maintaining the health and safety of all persons involved.

21.1 Suspends temporary application of safety valve provisions resulting from the temporary decrease in TDOC prisoners. The provisions of Tennessee Code Annotated, Sections 41-1-505(a) and 41-1-508(c), requiring the automatic reversion of release eligibility dates of certain felony offenders to the dates in existence prior to their reductions pursuant to Title 41, Chapter 1, Part 5 upon attainment of ninety percent (90%) of the relevant designated capacity of the state correctional facilities are hereby suspended.

23.6 Commercial diver licenses with medical cards are extended. Consistent with the February 16, 2021, Federal Motors Carrier Safety Administration waivers, the provisions of Tennessee Code Annotated, Section 55-50-413, are hereby

suspended, as follows, to the extent necessary to delay the cancellation of a Class A, B, or C driver license with a medical card issued for more than ninety (90) days: Class A, B, and C driver license holders whose medical cards were set to expire from December 1, 2020, through March 29, 2021, will have until March 29, 2021, to submit a new medical card to the Department of Safety and Homeland Security to avoid cancellation, regardless of other termination dates that may be specified in the federal waiver. Renewal requirements shall return to their original schedule in subsequent years. Drivers who, since their last medical certificate was issued, have been diagnosed with a medical condition that would disqualify the driver from operating in interstate commerce, or who, since their last medical certificate was issued, have developed a condition that requires an exemption or Skill Performance Evaluation from FMCSA are not covered under the suspension in this paragraph.

27. Educational and training deadlines administered by the Department of Commerce and Insurance may be extended. The provisions governing the initial issuance and renewal of licenses, permits, and certifications issued by the Department of Commerce and Insurance and the boards, commissions, and agencies administratively attached to the Department are suspended to the extent necessary to give the Commissioner of Commerce and Insurance and the boards, commissions, and agencies discretion to reasonably extend the deadline for obtaining the required testing, education, continuing education, or in-service credits as necessary to respond to the effects of COVID-19.

28. Deadlines for building code, building plan, electrical, and residential inspections may be extended. The provisions governing building plans review or building code requirements or electrical or residential inspections under the purview of the Department of Commerce and Insurance are suspended to the extent necessary to give the Commissioner of Commerce and Insurance discretion to reasonably extend the deadline for compliance with such provisions as necessary to respond to the effects of COVID-19.

33. Inspections of mental health and substance abuse facilities and services are suspended. The provisions of Tennessee Code Annotated, Section 33-2-413(a), are hereby suspended to the extent necessary to give the Commissioner of Mental Health and Substance Abuse Services the authority to suspend the required unannounced life safety and environmental inspections of licensed services or facilities, absent the death of a service recipient at the service or facility with an indication of possible abuse or neglect by the service or facility or its employees or a request for placement assistance from law enforcement or state or federal agencies regarding the service or facility.

33.1 Telephone assessments for involuntary commitment cases are permitted. The provisions of Tennessee Code Annotated, Section 33-4-108, are hereby suspended to the extent necessary to allow the issuance of a certificate of need under Tennessee Code Annotated, Section 33-6-404, for the emergency involuntary commitment of a person with a mental illness or serious emotional disturbance based upon a

telephone assessment of such person by a mandatory pre-screening agent designated pursuant to Tennessee Code Annotated, Sections 33-6-104 and 33-6-427, if the following conditions are met:

a. The mandatory pre-screening agent is not reasonably able to conduct an evaluation in-person or via readily available telehealth services; and

b. The mandatory pre-screening agent determines in the agent's professional judgment that conducting the assessment via telephone with the person is clinically appropriate.

34. TennCare policies adjusted to prevent coverage disruptions. The Division of TennCare is hereby authorized to create policies or modify existing policies as is necessary to ensure that members of the TennCare and CoverKids programs continue to receive medically necessary services without disruption during this state of emergency.

34.1 Designation and Payment for Certain Nursing Facilities as "COVID-19 Skilled Nursing Facilities/Units." The provisions of Tennessee Code Annotated, Titles 4, 68, and 71 and related rules, regulations, and policies are hereby suspended to the extent necessary to provide the Department of Health and the Division of TennCare the necessary authority and discretion to select, designate, and reimburse certain nursing facilities, or units within certain nursing facilities, as "COVID-19 Skilled Nursing Facilities/Units."

34.2 Medicaid Payments to "COVID-19 Skilled Nursing Facilities/Units." The provisions and requirements of Tennessee Code Annotated, Section 71-5-105, are hereby suspended to the extent necessary to permit the Division of TennCare to implement additional acuity-based payments for Medicaid members in nursing facilities designated as "COVID-19 Skilled Nursing Facilities/Units".

38. Telemedicine access is expanded. Health insurance carriers are urged to provide coverage for the delivery of clinically appropriate, medically necessary covered services via telemedicine to all providers, irrespective of network status or originating site. Providers are urged to follow the new guidance from the federal Centers for Medicare and Medicaid Services regarding equipment and everyday communications technologies that may be used for the provision of telemedicine services. Carriers are urged not to impose prior authorization requirements on medically necessary treatment related to COVID-19 delivered by in-network providers via telemedicine. Health care professionals licensed in another state who are authorized pursuant to this Order to temporarily practice in this State are permitted to engage in telemedicine services with patients in Tennessee to the extent the scope of practice of the applicable professional license in this State would authorize the professional to diagnose and treat humans. Tennessee Code Annotated, Section 63-1-155(c)(3), is hereby suspended to allow telemedicine

services by pain management clinics, as defined in Tennessee Code Annotated, Section 63-1-301(7), and in the case of chronic nonmalignant pain treatment.

38.1 All licensed health care providers can practice telemedicine. The provisions of Tennessee Code Annotated, Section 63-1-155(a)(1), are hereby suspended to the extent necessary to allow telehealth or telemedicine services to be provided by any provider licensed under Title 63, regardless of the provider's authority to diagnose. This suspension does not otherwise alter or amend any licensee's scope of practice or record keeping requirements.

38.2 Licensed alcohol and drug abuse counselors can practice telemedicine. The provisions of Tennessee Code Annotated, Section 63-1-155(a)(1), and any other state or local law, order, rule, or regulation that would limit the application of this Paragraph 38.2 are hereby suspended, retroactively to March 26, 2020, when Paragraph 38.1 of Executive Order No. 36 suspended provisions of law to permit telemedicine by other licensed health care providers, to the extent necessary to allow telehealth or telemedicine services to be provided by an alcohol and drug abuse counselor licensed under Title 68. This suspension does not otherwise alter or amend an alcohol and drug abuse counselor's scope of practice or record keeping requirements.

38.3 Hospital-level care in home program and telemedicine access expansion is encouraged. In order to relieve the capacity strain on inpatient care due to COVID-19, health insurance carriers are urged to provide equivalent inpatient reimbursement to all providers for the delivery of clinically appropriate, medically necessary covered services via programs in which patients receive hospital-level care in home, irrespective of network status or originating site. Providers are urged to follow the new guidance from the federal Centers for Medicare and Medicaid Services regarding equipment and everyday communications technologies that may be used for the provision of telemedicine services. Carriers are urged to not impose additional prior authorization requirements on medically necessary treatment related to COVID-19 delivered via programs in which patients receive hospital-level care in home.

39. Collaborative pharmacy practice agreement for vaccinations. The chief medical officer of the Department of Health is authorized to implement a statewide collaborative pharmacy practice agreement specific to the administration and dispensing of the COVID-19 vaccine with any pharmacist licensed in and practicing in Tennessee. The provisions of Title 63 and related rules are hereby suspended to the extent necessary to authorize a pharmacist licensed under Title 63 to enter into the collaborative practice agreement with the chief medical officer of the Department of Health. A pharmacist entering into the statewide collaborative pharmacy practice agreement must attest and maintain proof that the pharmacist satisfies all of the requirements to qualify as a "covered person" under 42 U.S.C. § 247d-6d(i)(8)(B) pursuant to the HHS Guidance dated September 3, 2020. For each intern or technician for whom the pharmacist is the supervising qualified

pharmacist, the pharmacist must attest and maintain proof that the intern or technician satisfies all of the requirements to qualify as a "qualified person" under 42 U.S.C. § 247d-6d(i)(8)(B), pursuant to HHS Guidance dated October 20, 2020. For purposes of regulation and disciplinary action, licensees performing tasks pursuant to this provision remain subject to regulation and disciplinary action as if they were acting within their licensed scope of practice. Students performing tasks pursuant to this paragraph may be subject to disciplinary action upon applying for a license for actions inconsistent with the licensed scope of practice for which they are operating.

B. Restated provisions that originated in Executive Order No. 38 (as amended in other orders or herein):

2. Sports and athletics. Local education agencies and schools shall, notwithstanding any orders or provisions to the contrary, have the authority to permit, but are not required to permit, school-sponsored sporting events and activities, provided that all such activities, including practices and games or competition, must be conducted in a manner consistent with COVID-19-related guidance and rules adopted by the Tennessee Secondary Schools Athletic Association. Non-school-sponsored athletics, including practices and games or competition, must be conducted in a manner consistent with guidance from the Tennessee Economic Recovery Group (i.e., Tennessee Pledge). Collegiate and professional sporting events and activities must be conducted pursuant to the rules or guidelines of their respective governing bodies.

12. Take-out alcohol sales by restaurants and limited-service restaurants to continue in order to encourage carryout or delivery orders. The provisions of Tennessee Code Annotated, Title 57, and related rules and other state or local laws, orders, rules, or regulations are temporarily suspended to the extent necessary to allow restaurants and limited service restaurants, as defined in Tennessee Code Annotated, Section 57-4-102, and wine-only restaurants, as permitted by Tennessee Code Annotated, Section 57-4-101(c), to sell for take-out or delivery alcoholic beverages or beer, so long as the following conditions are met:

   a. Any sale of an alcoholic beverage or beer is for consumption off of the premises of the restaurant, limited service restaurant, or wine-only restaurant (collectively referred to hereafter as "restaurant") and is accompanied by the sale of food in the same order;

   b. An alcoholic beverage or beer sold under this Paragraph 12 must be packaged in a container or bottle with a secure lid or cap and in a manner designed to prevent consumption without removal of the lid or cap, and customers shall not remove such lids or caps while operating a motor vehicle;

c. Single servings of alcoholic beverages or beer and multi-serving bottles or containers of beer or wine normally sold by the restaurant may be sold under this Paragraph 12, but not bottles of spirits or liquor;

d. A restaurant selling alcoholic beverages or beer under this Paragraph 12 shall prominently post a warning in a manner reasonably calculated to provide notice to customers of open container laws, which must include the following language from Tennessee Code Annotated, Section 55-10-416: "No driver shall consume any alcoholic beverage or beer or possess an open container of alcoholic beverage or beer while operating a motor vehicle in this state.";

e. An employee or contractor of a restaurant providing or delivering alcoholic beverages or beer to a customer under this Paragraph 12 shall not provide or deliver such beverages to any person under twenty-one (21) years of age and may not provide or deliver such beverages to a person who is visibly intoxicated. Any such employee providing or delivering alcoholic beverages or beer must visually inspect a valid government-issued document deemed acceptable to the restaurant that includes the photograph and birth date of the adult consumer attempting to make an alcoholic beverage purchase and confirms that the person is at least twenty-one (21) years of age;

f. A person delivering alcoholic beverages or beer under this Paragraph 12 must be at least twenty-one (21) years of age and must have a valid driver license; and

g. An alcoholic beverage or beer sold under this Paragraph 12 must be sold during current operating hours.

12.1 Waiver of application fee to expand premises. The provisions of Tennessee Code Annotated, Title 57, and related rules and other state or local laws, orders, rules, or regulations are temporarily suspended to the extent necessary to waive the $300.00 application fee for restaurants, limited service restaurants, and all other establishments licensed under Title 57, Chapter 4, that apply to the Alcoholic Beverage Commission to expand the boundary of their premises covered under such license to sell alcoholic beverages for on-premises consumption in response to COVID-19.

13. Local orders.

a. No local orders permitted regarding dental or medical procedures. In order to ensure a comprehensive approach to the measures needed to conserve personal protective equipment, which is an issue that is statewide in scale, no local official or local governmental entity shall issue an order or measure

regarding the provision of medical, dental, or oral procedures because of COVID-19 absent authority delegated by the Governor.

b. Local orders in 89 counties without a locally run county health department (all counties except for Davidson, Hamilton, Knox, Madison, Shelby, and Sullivan). The provisions of this Order shall exclusively govern on the subjects they concern in the 89 counties that do not have a locally run county health department, and this Order shall supersede and preempt any emergency order, health order, or other order issued by a local official or local governmental entity that contravenes or would limit the application of the provisions of this Order.

c. Local orders in six counties with a locally run county health department (Davidson, Hamilton, Knox, Madison, Shelby, and Sullivan). The six locally run county health departments in Davidson, Hamilton, Knox, Madison, Shelby, and Sullivan counties shall have authority to issue additional orders or measures related to the containment or management of the spread of COVID-19, which may permit to a greater degree, or restrict to a greater degree, the opening, closure, or operation of businesses, organizations, or venues in those counties or the gathering of persons; provided that no local official or local governmental entity shall issue an order or measure regarding places of worship or an order or measure that contravenes Paragraphs 6, 9, or 10 of Executive Order No. 38, as restated herein. This Order shall govern on all subjects it concerns, except to the extent that the locally run county health department has issued differing local orders or measures regarding the opening, closure, or operation of businesses, organizations, or venues or the gathering of persons as provided for in this Paragraph 13.

d. Local orders of a proprietary nature. Nothing in this Order shall affect or limit local orders that do not contravene or limit the application of the provisions of this Order, such as orders or measures in which a local governmental entity acts in a proprietary capacity—for example, with respect to the opening or closure of governmental buildings, employee measures, or government operations.

C. Restated provisions that originated in Executive Order No. 54 (as amended in other orders or herein):

2. Specific delegation of authority to issue orders concerning face coverings. Notwithstanding anything to the contrary in Paragraph 13.b. of Executive Order No. 38, as restated herein, county mayors in the 89 counties that do not have a locally run county health department shall have the authority to issue orders or measures requiring or recommending the wearing of face coverings within their jurisdictions, consistent with Paragraph 3 of Executive Order No. 54, as restated herein.

3. Contents of local orders. Orders or measures issued by county mayors pursuant to this Order should be consistent with CDC guidance and may have such exemptions as deemed advisable, provided that, at a minimum, there shall be no requirement that a face covering be worn:

   i. Within one's residence or automobile, unless transporting others for hire;

   ii. By a child twelve (12) years of age or younger;

   iii. By someone who has trouble breathing due to an underlying health condition or another bona fide medical or health-related reason for not wearing a face covering;

   iv. By someone who is incapacitated or otherwise unable to remove the cloth face covering without assistance;

   v. While eating or drinking;

   vi. While outdoors, unless the person cannot substantially maintain appropriate social distancing from others outside of the person's household;

   vii. While working under conditions where appropriate social distancing from others outside of the person's household is substantially maintained;

   viii. In situations in which wearing a face covering poses a safety or security risk;

   ix. While in a house of worship unless required by that house of worship, but wearing a face covering in such locations is strongly encouraged; or

   x. While in a voting site for the purpose of voting or administering an election, but wearing a face covering in such locations is strongly encouraged.

5. Nothing preempts or supersedes any authority of bodies in six counties with a locally run county health department. Nothing herein or in Paragraphs 5 or 13 of Executive Order No. 38, as restated herein, preempts or supersedes any existing authority, as provided by executive order, statute, charter, or otherwise, of a locally run county health department, board of health, official, or local legislative body, located in a county with a locally run county health department, to issue or enact orders, ordinances, rules, or law regarding face coverings to mitigate the spread of COVID-19.

6. Effect of Order. A local order promulgated under the authority delegated by this Order constitutes an order, rule, or regulation promulgated pursuant to Tennessee

Code Annotated, Title 58, Chapter 2, Part 1, for purposes of Tennessee Code Annotated, Section 58-2-120.

D. General Provisions:

1. Suspension of laws that would limit application of this Order. Any law, order, rule, or regulation that would otherwise limit the enforceability of this Order is hereby suspended, pursuant to Tennessee Code Annotated, Section 58-2-107.

2. Severability. If any provision of this Order or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Order which can be given effect without the invalid provision or application, and to that end the provisions of this Order are declared to be severable.

3. Term and effective date. This Order takes effect at 11:59 p.m., Central Time, on February 27, 2021, and shall remain in effect until 11:59 p.m., Central Time, on April 28, 2021.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 26th day of February, 2020.

GOVERNOR

ATTEST:

SECRETARY OF STATE