State of North Carolina

ROY COOPER

GOVERNOR

April 9, 2020

EXECUTIVE ORDER NO. 131

ESTABLISHING ADDITIONAL POLICIES FOR RETAIL ESTABLISHMENTS, FURTHER RISK MITIGATION MEASURES AT LONG TERM CARE FACILITIES, AND NEW PROCESSES TO EXPEDITE PAYMENT OF UNEMPLOYMENT INSURANCE CLAIMS

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 to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); 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 declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117-122, 124-125, and 129-130 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 121, a Stay at Home Order covering the entire State of North Carolina; 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 lab documentation that community spread has occurred; and

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

WHEREAS, additional steps will reduce the spread of COVID-19 at places where people congregate, such as retail establishments; and

WHEREAS, such additional steps are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, some areas of the state have seen more rapid and significant spread of COVID-19 than others, and some but not all local authorities have taken steps to address community spread of the illness in their communities; and

WHEREAS, Executive Order No. 121 identified certain types of businesses as COVID-19 Essential Businesses and Operations, including certain retail businesses; and

WHEREAS, Executive Order No. 121 directed that social distancing should be practiced to the maximum extent practicable in all COVID-19 Essential Businesses and Operations, including retail businesses, and provided that certain businesses had to cease operations unless they could maintain specified Social Distancing Requirements; and

WHEREAS, recent evidence indicates that additional measures are required to ensure social distancing and prevent the spread of COVID-19 in retail businesses; and

WHEREAS, the undersigned has determined that, to prevent the spread of COVID-19, retail establishments must restrict their maximum occupancy during this emergency, must clearly mark spacing for social distancing, and must perform frequent and routine environmental cleaning and disinfection of high-touch areas; and

WHEREAS, in Executive Order No. 120, the undersigned placed additional restrictions on long term care facilities; and

WHEREAS, NCDHHS has now recommended that increased measures are required to control the spread of COVID-19 in long term care settings; and

WHEREAS, the undersigned has determined that additional mitigation measures, recommended by NCDHHS, should be required at all skilled nursing facilities; and

WHEREAS, due to the State of Emergency, many North Carolinians must stay home and many businesses have been ordered closed, to slow the spread of COVID-19; and

WHEREAS, COVID-19 has caused and will continue to cause substantial economic disruption in North Carolina, including disruption to employees and employers; and

WHEREAS, on March 17, 2020, with the concurrence of the Council of State, the undersigned issued Executive Order No. 118, which broadened unemployment insurance benefits availability in response to COVID-19; and

WHEREAS, since that date, the Division of Employment Security has received approximately five hundred thousand (500,000) claims; and

WHEREAS, to timely process this unprecedented volume of claims, the undersigned has determined that the Division of Employment Security must explore all measures available to expedite the claims process and get relief to North Carolinians; and

WHEREAS, the Division of Employment Security has hired new staff and engaged additional resources to address the increased number of unemployment benefits claims; and

WHEREAS, N.C. Gen. Stat. § 96-15(a1) provides a mechanism, in the case of partial unemployment, for employers to submit claims on behalf of their employees through the use of an automated process; and

WHEREAS, the automated process established under N.C. Gen. Stat. § 96-15(a1), known as the "attached claim" process, is ordinarily available only for six (6) weeks of benefits; and

WHEREAS, this attached claim process is ordinarily available for use with respect to an employee only once during a benefit year; and

WHEREAS, this attached claim process is ordinarily available only for an employer which has a positive credit balance in its account and immediately pays the Division of Employment Security an amount equal to the full cost of unemployment benefits payable to the employee at the time the claim is filed; and

WHEREAS, expanding availability of the attached claim process would allow more employers to submit claims for their employees, leading to faster automated processing and unemployment insurance checks arriving sooner in the hands of North Carolinians in need; and

WHEREAS, therefore, the undersigned has determined that the Division of Employment Security should expand availability of the attached claim process so that employers may submit claims through the use of automation independent of whether the employer has a positive credit balance in its account; 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 needed control cannot be imposed locally 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; 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 issued, 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, 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, the President of the United States signed the Families First Coronavirus Response Act (Public Law 116-127) on March 18, 2020, which included the Emergency Unemployment Insurance Stabilization and Access Act of 2020 in Division D of the Act; and

WHEREAS, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 includes emergency flexibility for states to temporarily modify certain aspects of their unemployment compensation laws, a short-term waiver of interest on state trust fund advances, and full federal funding during extended benefit periods through December 31, 2020; and

WHEREAS, the U.S. Department of Labor issued an Unemployment Insurance Program Letter No. 13-20, Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020, on March 22, 2020, which provides direction for emergency flexibility to states administering unemployment insurance programs; and

WHEREAS, the President of the United States signed the CARES Act of 2020 (Public Law 116-36) on March 27, 2020, which provided increased unemployment insurance benefits under Title II, Subtitle A of the Act; and

WHEREAS, the U.S. Department of Labor issued Unemployment Insurance Program Letter No. 14-20, Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility, on April 2, 2020, which provides additional guidance for states in administering emergency state unemployment programs; and

WHEREAS, pursuant to 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

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, 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, including by: (a) imposing a curfew; (b) directing and compelling the voluntary or mandatory evacuation of people from an area; (c) prescribing routes, modes of transportation and destinations in connection with evacuation; (d) controlling the movement of persons within an emergency area; and (e) closing streets, roads, highways, and other areas ordinarily used for vehicular travel, except to the movement of persons necessary for recovery from the emergency; 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 activities which may be reasonably necessary to maintain order and protect lives and property during a state of emergency; and

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

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "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 this Article."

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. Required Policies for Retail Establishments

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

All retail establishments that are permitted to operate under Executive Order No. 121 or under any Order issued by a political subdivision of the State are required to take additional steps specified in this Section (the "Additional Social Distancing Requirements") to limit the risk of community transmission of COVID-19, and to ensure that employees and customers are able to maintain appropriate social distancing.

For purposes of this Executive Order, "retail establishments" include any business in which customers enter to purchase goods or services, including but not limited to grocery stores, convenience stores, large-format retail stores, pharmacies, banks, ABC stores, hardware stores, and vehicle dealerships. "Retail establishments" also includes retail establishments operated by the State, its political subdivisions, or agencies thereof.

A. **Emergency Maximum Occupancy**.

1. The occupancy of all operating retail establishments shall be limited to be no more than:

   - Twenty percent (20%) of the stated fire capacity; or
   - Five (5) customers for every one thousand (1000) square feet of the retail location's total square footage, including non-customer-facing portions.

   This limit is the "Emergency Maximum Occupancy" for that establishment.

2. If the retail establishment has reached Emergency Maximum Occupancy or expects to reach Emergency Maximum Occupancy, it must post sufficient staff at store entrances and exits to enforce the Emergency Maximum Occupancy limit.

3. The Emergency Maximum Occupancy shall be posted in a conspicuous place.

B. **Social Distance Markings**.

1. To encourage the minimum Social Distancing recommended by the Centers for Disease Control and Prevention ("CDC"), all operating retail establishments must clearly mark six (6) feet of spacing:

   a. In lines at cash registers; and
   b. In other high-traffic areas for customers, such as at deli counters and near high-volume products, inside the retail establishment.

   All operating retail establishments must enforce these limitations.

2. In addition, operating retail establishments which have reached or expect to reach Emergency Maximum Occupancy must clearly mark six (6) feet of spacing in a designated line outside the establishment.

C. **Cleaning and Disinfection**. All operating retail establishments shall perform frequent and routine environmental cleaning and disinfection of high-touch areas with a disinfectant approved by the Environmental Protection Agency ("EPA") for SARS-CoV-2 (the virus that causes COVID-19).

D. **Impact on Businesses Remaining Open**. Section 2(C)(1) of Executive Order No. 121 allowed some businesses and operations to remain open only if they could maintain specified Social Distancing Requirements. These businesses and operations must now also meet the Additional Social Distancing Requirements specified in this Section to remain open.

Businesses or operations that received letters from the North Carolina Department of Revenue stating that they could continue to operate only if they satisfied the Social Distancing Requirements in Executive Order No. 121 must also satisfy the Additional Social Distancing Requirements to remain open.

E. **No New Authority to Remain Open**. Nothing herein shall be deemed to authorize a business to operate which does not currently qualify as a COVID-19 Essential Business and Operation under Executive Order No. 121. Likewise, nothing herein shall be deemed to authorize a business to

operate if it has been deemed nonessential or otherwise has been ordered to be closed by a political subdivision.

F. **Effect on Local Orders.** In an effort to create uniformity across the state for retail businesses that may continue to operate, the undersigned amends all local prohibitions and restrictions imposed under any local state of emergency declarations to remove any language that sets a different standard for maximum occupancy in retail establishments or otherwise directly conflicts with this Section of this Executive Order. The undersigned also hereby prohibits during the pendency of this Executive Order the adoption of any prohibitions and restrictions under any local state of emergency declarations that set a different standard for maximum occupancy in retail establishments or otherwise directly conflict with this Section of this Executive Order.

G. **Effective Date and Duration**. This Section of this Executive Order is effective Monday, April 13, 2020, at 5:00 pm. This Section of this Executive Order shall remain in effect for thirty (30) days from that date or 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 Section.

Section 2. Recommended Policies for Retail Establishments

All operating retail establishments are strongly encouraged to take the following additional steps to limit the risk of spreading COVID-19, and to ensure that employees and customers maintain appropriate social distancing.

A. **Reduce Transmission Among Employees**.

1. All retail establishments are encouraged to supply, provide education on proper use, and encourage the use of cloth face coverings for all employees in positions that do not allow them to consistently maintain a six(6)-foot distance from other employees or customers, subject to the availability of these products.

2. All retail establishments should instruct employees to stay home if they are sick.

3. To encourage the minimum social distancing recommended by the CDC, all retail establishments are encouraged to mark six (6) feet of spacing in high-traffic areas within the staff-only portions of the establishment's premises.

B. **Hand Hygiene**.

1. All retail establishments are encouraged to place hand sanitizer prominently at entry and exit points, subject to availability of this product and to have disinfecting wipes and/or sprays that are EPA approved against SARS-CoV-2 available for shopping carts and baskets.

2. All employers should have their employees wash hands or use hand sanitizer, subject to the availability of that product, between interactions with customers and other employees.

C. **Designated Shopping Times for Seniors and At-Risk Groups**. All retail establishments are encouraged to designate exclusive shopping times for seniors and other at-risk groups as defined by the CDC.

D. **Signage for Social Distancing**. All retail establishments are encouraged to post signage that reminds customers and employees about required social distancing (at least six (6) feet apart).

E. **Online Ordering, Curbside Pickup, and No-Contact Checkout**. All retail establishments are encouraged to develop and use systems that allow for online, email, or telephone ordering, no-contact curbside or drive-through pickup or home delivery, and contact-free checkout.

F. **Additional Recommendations for High-Volume Retail Establishments**. High-volume retail establishments, such as grocery stores and pharmacies, are strongly encouraged to take the following additional measures to promote social distancing (at least six (6) feet apart) of customers and prevent spread of respiratory droplets:

1. Use acrylic or plastic shields at cash registers.

2. Clearly mark designated entry and exit points.
3. Provide assistance with routing through aisles in the store.

Section 3. Long Term Care Risk Mitigation Measures

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. **Scope of this Section**. This Section of this Executive Order places mandatory requirements on skilled nursing facilities. This Section strongly encourages the same measures, to the extent possible given constraints on the availability of personal protective equipment, for other kinds of long term care facilities, including adult care homes, family care homes, mental health group homes, and intermediate care facilities for individuals with intellectual disabilities.

B. **Mitigation Measures**. Skilled nursing facilities shall:

1. Remind staff to stay home when they are ill and prevent any staff who are ill from coming to work and/or staying at work.

2. Screen all staff at the beginning of their shift for fever and respiratory symptoms. This shall include:

    a. Actively taking that staff member's temperature; and

    b. Documenting an absence of any shortness of breath, any new cough or changes in cough, and any sore throat.

    If the staff member is ill, the facility must have the staff member put on a facemask and leave the workplace.

3. Cancel communal dining and all group activities, including internal and external activities.

4. Implement universal use of facemasks for all staff while in the facility, assuming supplies are available.

5. Actively monitor all residents upon admission, and at least daily, for fever and respiratory symptoms (shortness of breath, new cough or change in cough, and sore throat), and shall continue to monitor residents.

6. Notify the local health department immediately about either of the following:

    a. Any resident with new, confirmed, or suspected COVID-19.

    b. A cluster of residents or staff with symptoms of respiratory illness. A "cluster" of residents or staff means three (3) or more people (residents or staff) with new-onset respiratory symptoms in a period of 72 hours.

C. **Other kinds of long term care facilities**. Adult care homes, family care homes, mental health group homes, and intermediate care facilities for individuals with intellectual disabilities are strongly encouraged to follow the mitigation measures listed in subdivisions (1) through (6) above, assuming supplies are available.

D. **Effective Date and Duration**. This Section of this Executive Order is effective tomorrow, Friday, April 10, 2020, at 5:00 pm. This Section of this Executive Order shall remain in effect 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 Section.

Section 4. Expediting Processing of Unemployment Insurance Claims by Expanding Availability of the Attached Claim Process

For the reasons and pursuant to the authority set forth above and in Executive Order No. 118, the undersigned orders as follows:

A. If the North Carolina Department of Commerce determines that it will significantly speed the processing of unemployment insurance claims and ease the administrative burden upon the Division of Employment Security (the "Division"), the Division may choose not to enforce the requirements of N.C. Gen. Stat. § 96-15(a1) for the duration of this Section of this Executive Order, to the extent articulated in this Section, and to the extent necessary to expedite the distribution of unemployment insurance benefits mandated under Public Laws 116-36 and 116-127.

B. To the extent necessary for the immediate application and processing of unemployment insurance claims submitted by employers, the Division may choose not to enforce the requirements of N.C. Gen. Stat. § 96-15(a1) to the extent that:

1. The Division need not require an employer to pay to the Division an amount equal to the full cost of attached unemployment benefits payable to the employee at the time the claim is filed; and

2. The Division need not reject partial unemployment attached claims for claims exceeding six weeks; and

3. The Division need not reject partial unemployment attached claims submitted more than once during any benefit year with respect to an employee; and

4. The Division may accept claims by employers who do not have a positive credit balance at the time their application is filed.

C. To the extent, if any, that Subsection A of this Section cannot be fulfilled, the Division shall establish an automated process that allows employers to file attached claims for employees and that is consistent with Subsection A above.

D. Notwithstanding 2020 first-quarter unemployment payments remaining due and payable, the North Carolina Department of Commerce, Division of Employment Security, is further ordered to notify employers that, as under current law:

1. If employers decide to file attached claims for their employees, their 2020 first-quarter unemployment payments due to the Division need not be collected by the Division in advance of the employer submitting an attached claim.

E. **Effective Date and Duration**. This Section of this Executive Order is effective nunc pro tunc April 1, 2020, at 12:01 am. This Executive Order shall remain in effect for sixty (60) days unless repealed, replaced, or rescinded by another applicable Executive Order, or unless a Public Law is enacted that codifies this Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Section.

Section 5. No Private Right of Action

This Executive 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 North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 6. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 7. 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 8. Enforcement

A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.

B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 9. Effective Date

Unless otherwise expressly stated in another Executive Order, Sections 1, 3, and 4 of this Executive Order shall be effective and remain in effect as stated in Sections 1(G), 3(D), and 4(E) above. The remainder of this Executive Order is effective immediately and shall remain in effect for sixty (60) days from that date or 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.

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 9th day of April in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State