**PUBLIC HEALTH ORDER**
**NEW MEXICO DEPARTMENT OF HEALTH**
**ACTING SECRETARY BILLY J. JIMENEZ**

**DECEMBER 9, 2020**

**Public Health Emergency Order Imposing Temporary Restrictions on Non-Essential Surgical Procedures; Providing Guidance on Those Restrictions**

**ORDER**

**WHEREAS,** on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS,** Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through December 11, 2020;

**WHEREAS,** COVID-19 is a deadly virus and has taken the lives of over 285,000 Americans and over 1,700 New Mexicans;

**WHEREAS,** confirmed cases in the United States have risen to more than 15.2 million and confirmed COVID-19 infections in New Mexico have risen to over 110,000, with significant recent spikes in cases in New Mexico threatening to overwhelm our hospitals;

**WHEREAS,** local, national, and global health experts predict that the expected continued rise in cases of COVID-19 will strain the capacity and resources of health care providers, including available space and equipment in health care facilities;

**WHEREAS,** on December 2, 2020, the New Mexico Medical Advisory Team notified the Acting Secretary of Health that "Crisis Care Standards" have been activated within the state and that it is appropriate to apply Crisis Care Standards in hospital settings;

**WHEREAS,** on December 4, 2020, Governor Michelle Lujan Grisham issued Executive Order 2020-083 ("EO 2020-083"), stating that "'Crisis Care' standards may need to be implemented over the next several weeks and our State should prepare for that possibility"; and

**WHEREAS,** during a declared Public Health Emergency, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Emergency Response Act to "utilize, secure or evacuate health care facilities for public use." NMSA 1978, § 12-10A-6(A)(l). The Department of Health also possesses the legal authority under the Public Health Act to "respond to public health emergencies," "ensure the quality and accessibility of health care services and the provision of health care when health care is otherwise unavailable," "control and abate the causes

of disease, especially epidemics," and "maintain and enforce rules for the control of conditions of public health importance," NMSA 1978, § 24-1-3.

**NOW, THEREFORE, I,** Billy J. Jimenez, Acting Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to Executive Order 2020-083 under the full scope of her emergency powers under the All Hazard Emergency Management Act and the Emergency Licensing Act, do hereby **ORDER** and **DIRECT** as follows:

1. All hospital acute care facilities that provide care to patients in the State of New Mexico are prohibited from providing non-essential surgical procedures.

2. For purposes of this Order, "non-essential surgical procedures" include those services which can be delayed for three (3) months without undue risk to the patient's health. Examples of criteria to consider in distinguishing between essential and non-essential actions include: (a) threat to a patient's life; (b) threat of permanent dysfunction of an extremity, including teeth, jaws, and eyes; (c) risk of metastasis or progression of staging; (d) prenatal and postnatal care; and (e) any other factors that will conserve medical resources without creating undue risk of permanent harm to patients.

3. This Order's prohibition on non-essential surgical procedures is not meant to apply to: (a) the provision of emergency medical care or any actions necessary to provide treatment to patients with emergency or urgent medical needs; and (b) any surgery that if not performed would result in a serious condition of a patient worsening (e.g., removing a cancerous tumor or a surgery intended to manage an infection).

4. A person who willfully violates this Order may be subject to civil administrative penalties, including fines up to $5,000 per violation, in addition to other civil or criminal penalties that may be available at law.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) This Order shall take effect on December 11, 2020 and remain in effect through January 4, 2021.

**THIS ORDER** supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect for the duration indicated in the Order unless otherwise rescinded.

ATTEST:

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 9TH DAY OF DECEMBER 2020

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

BILLY J. JIMENEZ
ACTING CABINET SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH