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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICHILLI, RN, BSN, MA
Commissioner

EXECUTIVE DIRECTIVE NO. 20-006 (REVISED)[1]

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious and, at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and

WHEREAS, COVID-19 is responsible for the 2019 coronavirus outbreak which has now spread to the United States of America, including but not limited to the State of New Jersey; and

WHEREAS, the spread of COVID-19 within New Jersey constitutes an imminent public health hazard that threatens and presently endangers the health, safety and welfare of the residents of the State; and

WHEREAS, on March 9, 2020, New Jersey Governor Philip D. Murphy issued Executive Order No. 103 ("EO 103") proclaiming that a public health emergency and that a state of emergency exists in the State of New Jersey; and

WHEREAS, EO 103 recognizes that it is necessary and appropriate to take action against this public health hazard to protect and maintain, as well as, restore the health, safety and welfare of New Jersey residents and visitors pursuant to N.J.S.A. 26:13-1, et seq. and N.J.S.A. App. A:9-33, et seq., among other legal authorities; and

WHEREAS, the Public Health Emergency was extended by Governor Murphy under Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, 191, and 200; and

WHEREAS, as of December 14, 2020, there were at least 405,448 positive cases of COVID-19 in New Jersey and at least 15,907 of those cases having resulted in death; and

WHEREAS, of the infected persons hospitalized, many will require ventilators and other scarce resources; and

WHEREAS, based upon currently available information and estimates, the number of infected persons requiring ventilators and other medical equipment may exceed the number of available ventilators and other medical equipment available; and

[1] This Executive Directive is revised to issue an updated and amended critical resource allocation policy.

WHEREAS, Douglas B. White, MD, MAS, of the University of Pittsburgh Department of Critical Care Medicine has published a Model Hospital Policy for Allocating Scarce Critical Care Resources (the "Pittsburgh Model Policy"); and

WHEREAS, the New Jersey Department of Health published *Allocation of Critical Care Resources During a Public Health Emergency* on April 11, 2020, adapted in part from the Pittsburgh Model Policy; and

WHEREAS, the New Jersey Department of Health has reviewed various model allocation policies as well as allocation policies enacted in other states;

WHEREAS, the New Jersey Department of Health has reviewed and supplemented the previously published *Allocation of Critical Care Resources During a Public Health Emergency*; and

WHEREAS, it is in the public interest to implement measures that accomplish the goal of ensuring that all health care facilities that may face a shortage of ventilators or other scarce resources adopt and adhere to medically ethical and appropriate guidelines for the allocation of ventilators, ICU/critical care beds, and critical care staff, and develop a structure to effectuate those guidelines; and

WHEREAS, P.L. 2020, c.18, states that "a health care facility or a health care system that owns or operates more than one health care facility shall not be criminally or civilly liable for damages for injury or death alleged to have been sustained as a result of an act or omission by the facility or system or one or more of the facility's or system's agents, officers, employees, servants, representatives or volunteers during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020 in connection with the allocation of mechanical ventilators or other scarce medical resources, if the health care facility or system adopts and adheres to a scarce critical resource allocation policy that at a minimum incorporates the core principles identified by the Commissioner of Health in an executive directive or administrative order, and the health care facility's or system's agents, officers, employees, servants, representatives and volunteers shall not be civilly or criminally liable for an injury caused by any act or omission pursuant to this subsection during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020 pursuant to, and consistent with, such policy"; and

WHEREAS, P.L. 2020, c. 18 is effective as of April 14, 2020, and the above provision, among others, is retroactive to March 9, 2020; and

WHEREAS, the New Jersey Emergency Health Powers Act, specifically N.J.S.A. 26:13-11, authorizes the Commissioner of the New Jersey Department of Health to issue orders to control, restrict and regulate by allocation the use of medical supplies necessary to protect the public health, safety and welfare of the people of the State; and

NOW THEREFORE, I, Judith Persichilli, Commissioner of the New Jersey Department of Health, by virtue of the powers vested in me by the New Jersey Emergency Health Powers Act, N.J.S.A. 26:13-1, et seq., as well as the authority conferred on me by Executive Order No. 103, do hereby declare and order as follows:

1. All health care facilities in New Jersey that possess mechanical ventilators for the care of all patients requiring use of such ventilators must determine whether to adopt a written policy to govern the allocation of mechanical ventilators during the public health emergency arising from COVID-19. Such a policy may, in addition, govern the allocation of other scarce medical resources.

2. A health care facility that adopts the Department of Health's model policy *Allocation of Critical Care Resources During a Public Health Emergency*, as amended and supplemented, as well as the health care facility's agents, officers, employees, servants, representatives and volunteers, shall not be civilly liable for any damages arising from an injury to a patient caused by any act or omission pursuant to, and consistent with, such policy. Such immunity supplements any other immunities and defenses that may apply.

This Directive shall take effect immediately. The provisions of this Directive shall remain in force and effect for the duration of the Public Health Emergency originally declared in Executive Order No. 103 (2020) pursuant to the New Jersey Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., unless modified, supplemented and/or rescinded.

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Judith Persichilli, R.N., B.S.N., M.A.
Commissioner

December 16, 2020

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Date