GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

EXECUTIVE ORDER

Executive Order 2020-57

Enhanced Surveillance Advisory
Monitoring the Administration of COVID-19 Vaccination

WHEREAS, on January 31, 2020, Secretary Alex Azar ("Secretary") of the United States Department of Health and Human Services ("HHS"), declared a public health emergency to address COVID-19; and

WHEREAS, on March 11, 2020, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

WHEREAS, pursuant to A.R.S. § 26-303(E)(1) and during a state of emergency, the Governor shall have complete authority over all agencies of the state government and the right to exercise, within the area designated, all police power vested in the State by the constitution of this State in order to effectuate the purposes of A.R.S. Title 26, Chapter 2; and

WHEREAS, pursuant to A.R.S. § 36-787, during a public health state of emergency, the Department of Health Services shall coordinate all matters pertaining to the public health emergency; and

WHEREAS, on March 30, 2020, the Director of the Arizona Department of Health Services (ADHS), based on an epidemiological assessment of Arizona specific data and in alignment with the Centers for Disease Control and Prevention ("CDC") guidance, recommended the State implement enhanced mitigation strategies which are continuing; and

WHEREAS, on May 15, 2020, the President of the United States announced Operation Warp Speed ("OWS") to accelerate development, production and distribution of COVID-19 vaccines, therapeutics, and diagnostics to produce and deliver doses of safe and effective vaccines; and

WHEREAS, as of November 18, 2020, there have been 283,102 diagnosed cases of COVID-19 in Arizona including 6,365 deaths; and

WHEREAS, influenza season in Arizona results in an increase of hospitalizations each year, placing a strain on the Arizona healthcare system; and

WHEREAS, the significant COVID-19 spread in July 2020 resulted in space and staff constraints in Arizona's hospitals, with a fewer than 9% of intensive care unit beds reported available for several days in July; and

WHEREAS, both COVID-19 and influenza can cause serious complications, including pneumonia and even death;

WHEREAS, there were 36,483 diagnosed cases of influenza during the 2019-2020 influenza season in Arizona including 5 pediatric deaths and 5,717 total deaths due to influenza and pneumonia; and

WHEREAS, due to the potential of large number of individuals requiring medical treatment or hospitalization as a result of COVID-19 during influenza season, it is necessary to prevent both influenza and COVID-19infections to alleviate a seasonal hospital surge in patients; and

WHEREAS, the Arizona Department of Health Services requires continued robust and accurate data to successfully combat the COVID-19 pandemic through specimen testing; and

WHEREAS, immunization with a safe and effective COVID-19 vaccine is a critical component of the whole government strategy to reduce COVID-19 related illnesses, hospitalizations, and deaths and to help restore societal functioning; and

WHEREAS, access to immunization and vaccine administration data is critical to the whole government response to the COVID-19 public health emergency; and

WHEREAS, in furtherance of the federal government response efforts, the CDC, an agency of HHS requires the State's COVID-19 immunization and vaccine administration data for a range of purposes, including: rapidly assessing patterns of vaccination among populations; identifying pockets of undervaccination; assisting in determining vaccine resource allocation to address the needs of State; monitoring vaccine effectiveness and safety, assessing spectrum of illness, disease burden, risk factors for severe disease and outcomes; and helping to understand the impact of COVID-19 on the healthcare system and communities; and

WHEREAS, pursuant to A.R.S. § 36-664, communicable disease-related information is confidential; and

WHEREAS, A.R.S. § 36-664 prohibits the release of communicable disease-related information but also provides for specific circumstances when such information can be released, such as when authorized by state or federal law; and

WHEREAS, A.R.S. § 36-664(A)(9) authorizes the release of communicable disease-related information to a federal, state or local government agency authorized by law to receive the information; and

WHEREAS, A.R.S. § 36-664(A)(15) authorizes the release of communicable disease-related information to a person or entity as required by federal law; and

WHEREAS, A.R.S. § 36-664(C)(1) and (4) authorize the release of communicable disease related information if specifically authorized by federal or state law or for the purposes of research as authorized by state and federal law; and

WHEREAS, A.R.S. § 36-664(G) provides a person to whom communicable disease related information is disclosed shall not disclose the information to another person except as authorized by A.R.S. Title 36, Chapter 6, Article 4; and

WHEREAS, according to 42 United States Code ("U.S.C.") § 247d-4 Congress has found that the CDC has an essential role in defending against and combatting public health threats and requires secure and modern facilities, and expanded, improved, and appropriately maintained capabilities related to public health emergencies, sufficient to enable the CDC to conduct this important mission; and

WHEREAS, 42 U.S.C. § 247d-4(a)(3) provides the Secretary shall expand, improve, enhance and appropriately maintain the capabilities of the CDC relating to preparedness for and responding to public health emergencies, which may include improving capabilities for public health surveillance and reporting activities; and

WHEREAS, 42 U.S.C. § 247d-4(b)(1) provides that the Secretary, directly or through awards of grants, contracts, or cooperative agreements, shall provide for the establishment of an integrated system or systems of public health alert communications and surveillance networks between and among federal, state and public health officials as well as public and private health-related laboratories, hospitals, immunization information systems, and other health care facilities; and

WHEREAS, 42 U.S.C. § 247d-4(b)(2) provides that the Secretary shall develop a plan to, and ensure that networks developed pursuant to 42 U.S.C. § 247d-4(b)(1) allow for timely sharing and discussion, in a secure manner and in a form readily usable for analytical approaches, of essential information concerning a public health emergency, or

recommended methods for responding to such an emergency, allowing coordination to maximize all-hazards medical and public health preparedness and response to minimize duplication of effort; and

WHEREAS, 42 U.S.C. § 247d-4(c)(1) provides that the Secretary, in collaboration with State, local, and tribal public health officials, shall establish, and improve as applicable and appropriate, a near real-time electronic nationwide public health situational awareness capability through an interoperable network of systems to share data and information to enhance early detection of, rapid response to, and management of, potentially catastrophic infectious disease outbreaks, novel emerging threats, and other public health emergencies that originate domestically or abroad; and

WHEREAS, 42 U.S.C. § 241(a) provides that the Secretary shall promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical impairments; and

WHEREAS, 45 Code of Federal Regulations ("C.F.R.") § 164.501 provides a public health authority is an agency or authority of the United States, a State, or a person or entity acting under a grant of authority from or contract with such public agency, that is responsible for public health matters as part of its official mandate; and

WHEREAS, the CDC is a public health authority as defined in 45 C.F.R. § 164.501; and

WHEREAS, pursuant 45 C.F.R. § 164.512(b), public health authorities are authorized to collect and receive protected health information for the purpose of preventing or controlling disease, injury, or disability and the conduct of public health surveillance, public health investigations, and public health interventions; and

WHEREAS, immunization information systems ("IIS") support health care providers, families and public health through consolidating immunization information into one reliable source; and

WHEREAS, according to the CDC's *COVID-19 Vaccination Program Interim Playbook for Jurisdiction Operations*, the CDC not only requires jurisdictions to facilitate and monitor IIS reporting by enrolled vaccination providers, but also requires vaccination providers enrolled in the COVID-19 Vaccination Program to report certain data elements for each dose administered within twenty-four hours of administration; and

WHEREAS, pursuant to A.R.S. § 36-782(A), the Governor, in consultation with the Director of the Arizona Department of Health Services, has the authority to issue an Enhanced Surveillance Advisory, if the Governor has reasonable cause to believe that an illness or health condition caused by a pandemic disease has or may occur; and

WHEREAS, pursuant to A.R.S. § 36-782(B), as determined by the Governor after considering the least restrictive measures necessary that are consistent with public health and safety, an Enhanced Surveillance Advisory shall direct the following:

(1) Those persons and entities required to report;
(2) The clinical syndromes, any illness or health condition that may be associated with a specific illness or health care conditions to be reported;
(3) Patient tracking;
(4) Information sharing; and
(5) Specimen testing coordination; and

WHEREAS, pursuant to A.R.S.§ 36-782(C), the Director of the Arizona Department of Health Services has notified local health authorities about the Governor's intent to issue this Enhanced Surveillance Advisory; and

WHEREAS, pursuant to A.R.S. § 36-782(D), if because of an immediate threat to public health the Arizona Department of Health Services and local health authorities are not able to hold a meeting with representatives of persons and institutions who will be affected by an Enhanced Surveillance Advisory before the Governor issues the Enhanced Surveillance Advisory, the meeting must take place within seventy-two hours after the Governor issues the Enhanced Surveillance Advisory, and the Department of Health Services has committed to complying with this requirement; and

WHEREAS, pursuant to A.R.S. § 36-782(E), to the extent possible, the Arizona Department of Health Services and local health authorities shall share Department and local health authority personnel, equipment, materials, supplies and other resources to assist persons and institutions affected to implement the terms of the Enhanced Surveillance Advisory; and

WHEREAS, pursuant to A.R.S. § 36-783(A), a health care provider or medical examiner shall report to the local health authority all cases of any illness, health condition or clinical syndrome and any additional information specified in an Enhanced Surveillance Advisory; and

WHEREAS, pursuant to A.R.S. § 36-783(D), reports required pursuant to an Enhanced Surveillance Advisory must be in writing or by any method directed by the Arizona Department of Health Services or local public health authority, and must be submitted within twenty-four hours after identifying the reportable circumstance; all persons required to report pursuant to an Enhanced Surveillance Advisory must cooperate with the Arizona Department of Health Services and a local health authority in effecting the Enhanced Surveillance Advisory, and failure to report pursuant to an Enhanced Surveillance Advisory is an act of unprofessional conduct; and

WHEREAS, pursuant to A.R.S. § 36-783(E), the Arizona Department of Health Services and a local public health authority shall maintain as confidential:

(1) Any information or a particular part of information provided pursuant to the Enhanced Surveillance Advisory that, if made public, would divulge the trade secrets of a person or business; and

(2) Other information likely to cause substantial harm to the person's or business' competitive position; and

WHEREAS, pursuant to A.R.S. § 36-783(F), a local health authority shall immediately notify the Arizona Department of Health Services of any reports received during the period of an Enhanced Surveillance Advisory; and

WHEREAS, pursuant to A.R.S. § 36-784(A), during an Enhanced Surveillance Advisory, to identify, treat and track persons who may have been exposed to an illness or health condition identified in the Enhanced Surveillance Advisory, the Arizona Department of Health Services and local health authorities may access confidential patient information, including medical records, wherever and by whomever held and whether or not patient identity is known; and

WHEREAS, pursuant to A.R.S. § 36-784(C), any medical information or other information from which a person might be identified that is received by the Arizona Department of Health Services or a local health authority in the course of an Enhanced Surveillance Advisory is confidential and is not available to the public; and

WHEREAS, pursuant to A.R.S. § 36-786(A), the Arizona State Laboratory shall coordinate specimen testing related to an Enhanced Surveillance Advisory, and if necessary and at State expense for testing specimens; the Arizona Department of Health Services may designate other laboratories to assist it in testing specimens; and

WHEREAS, pursuant to A.R.S. § 36-786(B), the Arizona Department of Health Services shall determine the criteria necessary for private or public laboratories to conduct clinical or environmental testing associated with any illness or health condition subject to an Enhanced Surveillance Advisory; and

WHEREAS, pursuant to A.R.S. § 36-786(C) and during an Enhanced Surveillance Advisory, a public safety authority, if requested by the Arizona Department of Health Services, shall coordinate and provide transportation of clinical or environmental samples to the Arizona State Laboratory or other testing laboratory designated by the Arizona Department of Health Services; and

WHEREAS, pursuant to A.R.S. § 36-787(A), during a state of emergency declared by the Governor in which there is an occurrence or imminent threat of an illness or health condition caused by a pandemic disease that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability, the Arizona Department of Health Services shall coordinate all matters pertaining to the public health emergency response of the State; and

WHEREAS, pursuant to A.R.S. § 36-787(A), during a state of emergency declared by the Governor, the Arizona Department of Health Services has primary jurisdiction, responsibility and authority for:

(1) Planning and executing public health emergency assessment, mitigation, preparedness response and recovery for the State;

(2) Coordinating public health emergency response among State, local and tribal authorities;

(3) Collaborating with relevant federal government authorities, elected officials of other states, private organizations and private sector companies;

(4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and

(5) Organizing public information activities regarding state public health emergency response operations; and

WHEREAS, pursuant to A.R.S. § 36-790(A), the physician patient privilege does not prevent a person or health care provider from complying with the duty to report or provide personal information and medical information to the Arizona Department of Health Services or local health authority in accordance with A.R.S. Title 36, Chapter 6, Article 9; and

WHEREAS, communicable disease-related health information is confidential and must be protected, and any dissemination is limited to the minimum necessary for protecting those impacted; and

WHEREAS, public release of an individual's personal information gathered by public health including home address can result in a fear of reporting by those potentially infected and decrease the ability of health departments to control outbreaks of communicable diseases; and

WHEREAS, Arizona is committed to containing the spread and reducing the adverse outcomes associated with COVID-19; and

WHEREAS, it is necessary and appropriate to take action to ensure that the COVID-19 pandemic is contained to ensure that residents of Arizona remain safe and healthy.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this state including A.R.S. §§ 26-303 and 36-787, hereby order as follows:

1. The COVID-19 pandemic in Arizona justifies the issuance of an Enhanced Surveillance Advisory pursuant to A.R.S. § 36-782(A) and such advisory is issued by this Executive Order.

2. This Enhanced Surveillance Advisory is in addition to and supplements Executive Order 2020-56.

3. Nothing in this order requires a person to obtain a vaccine for COVID-19 when one becomes available. However, employers may implement policies for employees that are consistent with law for such a requirement.

4. Pursuant to the Enhanced Surveillance Advisory, A.R.S. §§ 36-782(B)(4) and 36-787(A)(3) and as authorized by A.R.S. 36-664(A)(9) and (C)(1) and (4), the Arizona Department of Health Services shall collaborate with the following:
    a. The CDC and HHS by sharing the State's COVID-19 immunization and vaccine administration information with the CDC and HHS pursuant to and in accordance with its Data Use and Sharing Agreement; and
    b. The Association of Public Health Laboratories by sharing the State's COVID-19 immunization and vaccine administration information with the Immunization Gateway Project pursuant to and in accordance with its Data Use agreement; and
    c. Signatories of the Public Health IIS Interjurisdictional Memorandum of Understanding ("MOU"), with the American Immunization Registry Association serving as the administrator, by sharing the

State's COVID-19 immunization and vaccine administration information pursuant to and in accordance with its MOU.

5. Pursuant to the Enhanced Surveillance Advisory and A.R.S. §§ 36-782(B)(1) and (4), 36-783(A), (D) and (F), and 36-787(A), an individual or local health agency who administers COVID-19 vaccine shall report the following through a department required format to the Arizona Department of Health Services every twenty-four hours:
    a. The individual's name, date of birth, gender, race/ethnicity, residential address, phone number, and vaccine priority group;
    b. The vaccine product information, including CVX, dose number, lot number, manufacturer, and expiration date;
    c. The route of administration and administration site on the patient's body;
    d. The month, day, and year of each immunization;
    e. The facility administration site details including facility name, type, and address; and
    f. Attest to providing the individual with follow up information if a second dose is required.

6. The Arizona Department of Health Services, in conjunction with the Department of Insurance, shall require that all insurers regulated by the State cover influenza and pandemic vaccines and administration without regard to whether the provider is in-network.

7. If any provision of this Executive Order or others associated with it and their application to any person or circumstance 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.

8. The orders contained herein may be revised at any time by the Director of the Arizona Department of Health Services and shall automatically terminate after sixty (60) days, unless renewed.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

GOVERNOR

DONE at the Capitol in Phoenix on this eighteenth day of November in the year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fifth.

ATTEST:

Secretary of State