State of North Carolina

ROY COOPER
GOVERNOR

July 16, 2020

EXECUTIVE ORDER NO. 151

EXTENSION OF PHASE 2 MEASURES TO SAVE LIVES IN THE COVID-19 PANDEMIC

Background Statement

The COVID-19 Public Health Emergency

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 provide for the health, safety, and welfare of residents and visitors located in North Carolina; 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 issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, and 146-150; and

WHEREAS, more than ninety-three thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and over fifteen hundred people in North Carolina have died from the disease; and

The Need to Extend Executive Order No. 141

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, slowing and controlling community spread of COVID-19 is critical to ensuring that the state's healthcare facilities remain able to accommodate those who require medical assistance; and

WHEREAS, in Executive Order No. 141, issued on May 20, 2020, the undersigned urged that all people in North Carolina follow social distancing recommendations, including that everyone wear a cloth face covering, wait six (6) feet apart and avoid close contact, and wash hands often or use hand sanitizer; and

WHEREAS, to reduce COVID-19 spread, the undersigned, in Executive Order No. 141, required safety measures in certain business settings, limited mass gatherings, and closed certain types of businesses and operations; and

WHEREAS, the undersigned issued Executive Order No. 147 to address troubling trends in COVID-19 metrics following the issuance of Executive Order No. 141, including increasing daily case counts of COVID-19, increasing emergency department visits for COVID-19-like illnesses, increasing hospitalizations for COVID-19, and a continued high percentage of positive COVID-19 tests; and

WHEREAS, Executive Order No. 147 continued the measures of Executive Order No. 141 and imposed additional measures tailored to mitigate the spread of COVID-19, including requiring face coverings in certain settings; and

WHEREAS, North Carolina's daily case counts of COVID-19 continue to increase, the percent of COVID-19 tests that are positive remains elevated, emergency department visits for COVID-19-like illnesses are increasing, and hospitalizations for COVID-19 are increasing; and

WHEREAS, these trends require the undersigned to continue the measures of Executive Order No. 141, as amended by Executive Order No. 147, to slow the spread of this virus during the pandemic and enable the reopening of the state's schools for in-person instruction in the fall, subject to applicable requirements and guidance; and

WHEREAS, a phased approach to reigniting the state's economy and reducing restrictions on businesses and activities, with some businesses and activities that pose an increased risk for COVID-19 spread remaining closed, is necessary to slow the spread of COVID-19, since the operation of each group of businesses and the loosening of each restriction on businesses adds incremental risk and thereby increases the aggregate risk of spread of COVID-19; and

Medical Exception for Use of Indoor Areas of Exercise Facilities, Gyms, and Fitness Facilities

WHEREAS, since the issuance of Executive Order No. 141, the North Carolina Department of Health & Human Services ("NCDHHS") and the North Carolina Department of Justice ("NCDOJ") have issued guidance documents and letters addressing the restrictions established by the Executive Order for exercise facilities, gyms, and fitness facilities; and

WHEREAS, the undersigned, in close consultation with NCDHHS and NCDOJ, has determined to make clear that these guidance documents represent an enforceable interpretation of Executive Order No. 141; and

Restrictions on Receptions and Parties

WHEREAS, certain types of businesses, settings, and events by their very nature present greater risks of the spread of COVID-19 because of the nature of the activity, the way that people have traditionally acted and interacted with each other in that space, and the duration of time that patrons stay in the establishment; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings where people are less likely to maintain social distancing by staying six (6) feet apart; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings where people are in close physical proximity for an extended period of time (more than 15 minutes); and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in gatherings of larger groups of people because these gatherings offer more opportunity for person-to-person contact with someone infected with COVID-19; and

WHEREAS, at private parties and receptions, people tend to gather together, interact socially, dance, and talk with their friends in close proximity, much as people do in bars and nightclubs; and

WHEREAS, therefore, the undersigned has determined that parties and receptions at restaurants must be subject to strict limits, and that these limits must be applicable whether the party or reception takes place in a restaurant, in a hotel, in a conference center, in a venue used exclusively to host parties or receptions, or in any other location currently open under this Executive Order; and

Statutory Authority and Determinations

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 Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.12(3)(e), the Division of Emergency Management must coordinate with the State Health Director to revise the North Carolina Emergency Operations Plan as conditions change, including making revisions to set "the appropriate conditions for quarantine and isolation in order to prevent the further transmission of disease," and following this coordination, the Emergency Management Director and the State Health Director have recommended that the Governor develop and order the plan and actions identified in this Executive Order; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.23 in conjunction with N.C. Gen. Stat. §§ 75-37 and 75-38, the undersigned may issue a declaration that shall trigger the prohibitions against excessive pricing during states of disaster, states of emergency or abnormal market disruptions; 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, 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 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, thus needed control cannot be imposed locally; 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 enacted or declared, 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, 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; 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 other activities or conditions, the control of which may be reasonably necessary to maintain order and protect lives or property during a state of emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(1), when the undersigned imposes the prohibitions and restrictions enumerated in N.C. Gen. Stat. § 166A-19.31(b), the undersigned may amend or rescind the 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, and for the reasons and pursuant to the statutes listed above and in Executive Order Nos. 141 and 147, **IT IS ORDERED**:

Section I. Extension and Amendment of Phase 2 Order.

Executive Order No. 141 shall remain in effect, as amended by Executive Order No. 147 and this Executive Order as detailed further below, until 5:00 pm on August 7, 2020. The effective date provisions of Executive Order Nos. 141 and 147 are amended to have those orders continue in effect through the above-listed time and date.

Section II. Clarification on Use of Indoor Areas of Exercise Facilities, Gyms and Other Fitness Facilities.

On June 29, 2020, NCDHHS posted two guidance documents that make clear the limits of any medical exception that allows use of the indoor areas of exercise facilities, gyms, and fitness facilities that otherwise are closed under Section 8(A) of Executive Order No. 141. These documents are the Interim Guidance for Fitness Center and Gym Settings with Limited

Operations, available at files.nc.gov/covid/documents/guidance/NCDHHS-Interim-Guidance-for-Fitness-Center-and-Gym-Settings.pdf, and the Statement Regarding June 5, 2020 Letter from the North Carolina Department of Justice, available at files.nc.gov/covid/documents/guidance/DHHS-Statement-on-DOJ-Letter-Medical-Exception-FINAL.pdf.

These June 29 guidance documents represent the undersigned's interpretation of Executive Order No. 141, as amended. Any medical exception to Executive Order No. 141 allowing use of the indoor areas of exercise facilities, gyms, and fitness facilities is limited as stated in the June 29 guidance documents. These limitations include the requirement that each patron using the medical exception must present to an exercise facility, gym, or fitness facility a medical or health care provider's note or other written communication to confirm that each patron's use is prescribed or directed by a medical or health care provider.

To the extent that exercise facilities, gyms, and fitness facilities are currently operating to serve patrons under the limited medical exception above, they must do so in compliance with the NCDHHS Interim Guidance for Fitness Centers and Gym Settings with Limited Operations, available at files.nc.gov/covid/documents/guidance/NCDHHS-Interim-Guidance-for-Fitness-Center-and-Gym-Settings.pdf.

Section III. Clarification to Restrictions on Parties and Receptions.

Section 7 of Executive Order No. 141 is amended to add the following subsection.

E. **Limit on Receptions or Parties.** Parties and receptions, like all other private events or convenings which are not excepted from the prohibition on Mass Gatherings, are limited to the Mass Gathering limit of ten (10) people indoors or twenty-five (25) people outdoors. This limit applies regardless whether the event takes place in a restaurant, in a conference center, in a hotel ballroom, in a venue that is used exclusively for receptions or parties, or in some other space open under this Executive Order.

Section 8(A) of Executive Order No. 141 is amended to remove the text "Venues for Receptions or Parties." These venues may open, but they are limited to the Mass Gathering limit stated above.

Section IV. Extension of Price Gouging Period.

Section 11 of Executive Order No. 141 is amended to read as follows:

> Pursuant to N.C. Gen. Stat. § 166A-19.23, the undersigned extends the prohibition against excessive pricing, as provided in N.C. Gen. Stat. §§ 75-37 and 75-38, from the issuance of Executive Order No. 116 through 5:00 pm on August 7, 2020.
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> The undersigned further hereby encourages the North Carolina Attorney General to use all resources available to monitor reports of abusive trade practices towards consumers and make readily available opportunities to report to the public any price gouging and unfair or deceptive trade practices under Chapter 75 of the North Carolina General Statutes.

Section V. Effective Date.

This Executive Order is effective at 5:00 pm on July 17, 2020. This Executive Order shall remain in effect through 5:00 pm on August 7, 2020 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.

Notwithstanding any provision of this Section and Section 16 of Executive Order No. 141, any statewide standing order for COVID-19 testing issued by the State Health Director under Section 9.5 of Executive Order No. 141 (as added by Section III of Executive Order No.

147) shall remain in effect for the duration of the State of Emergency unless specifically repealed, replaced, or rescinded.

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 16th day of July in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State