STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

At Charleston

EXECUTIVE ORDER NO. 28-20

By the Governor

WHEREAS, a State of Emergency was declared on the Sixteenth Day of March, Two Thousand Twenty for all counties in West Virginia (the "State of Emergency Declaration"), to allow agencies to coordinate and create necessary measures to prepare for and respond to the outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19; and

WHEREAS, Chapter 15, Article 5, Section 6 of the Code of West Virginia authorizes the Governor to, among other things, control ingress and egress to and from a disaster area or an area where large-scale threat exists, the movement of persons within the area, and the occupancy of premises therein, and to perform and exercise other functions, powers, and duties that are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, Executive Order 16-20 declared all elective medical procedures to be prohibited, but provided that patients would still have access to urgent, medically necessary procedures like those needed to preserve the patient's life or long-term health, and that the prohibition would apply equally to all types of elective medical procedures performed in hospitals, offices, and clinics throughout the state; and

WHEREAS, since the issuance of Executive Order 16-20, implementation of successful public health measures has resulted in revised projections of rates of infection and COVID-19 related deaths in West Virginia, as well as ever-strengthening supply chains for personal protective equipment ("PPE") and other medical equipment and supplies, resulting in greater hospital preparedness and response capacity; and

WHEREAS, resumption of more urgent elective medical procedures at such hospitals or ambulatory surgical centers as are regulated by the West Virginia Office of Health Facility Licensure and Certification ("OHFLAC") and are able to certify to OHFLAC that an established plan exists to safely allow more urgent elective medical procedures to resume and that sufficient PPE and other medical equipment and resources are sufficiently available is in the best interests of the citizens of West Virginia; and

NOW, THEREFORE, I, JIM JUSTICE, pursuant to the authority vested in me pursuant to the provisions of Chapter 15, Article 5, Section 6 and Chapter 15, Article 5, Section 1 of the Code of West Virginia, hereby **DECLARE** and **ORDER**, effective as of 12:00 AM, Eastern Standard Time, on the Twentieth day of April, Two Thousand Twenty, that Executive Order 16-20 is hereby amended and supplemented by the following:

1. More urgent elective medical procedures may be resumed at a hospital or ambulatory surgical center that is regulated by OHFLAC, and by health care providers at such hospital or ambulatory surgical center, upon application to and approval by OHFLAC. In such application to OHFLAC, the applicant hospital or ambulatory surgical center must certify that it satisfies the following criteria:
    a. There is an established plan in place to safely phase in surgeries based on sound clinical judgment; provided that such plan should use guidelines established by the American College of Surgeons as a benchmark in developing individual resumption plans.
    b. The established plan provides for the prioritization of surgical/procedural care and highly complex chronic disease management needs of patients; provided that select preventive services may also be necessary and appropriate as more urgent elective medical procedures.
    c. The established plan and all policies governing resumption of more urgent elective medical procedures ensure services can be timely and effectively adjusted in response to any change in public health conditions or surge in COVID-19 cases.

d. There are measures in place to ensure necessary PPE for medical staff and patients, following Centers for Disease Control and Prevention guidelines; such measures shall include at a minimum ensuring that providers have the following:

   i. Adequate inventories of PPE, supplies, equipment, and medicine in their facilities for at least a 14-day supply;

   ii. A plan for conserving PPE, supplies, equipment, and medicine; and

   iii. Access to a reliable supply chain to support continued operations and to effectively respond to an unexpected surge in a timely manner; provided that providers who practice in specialties or practice settings that may not experience a surge in COVID-19 patients must be aware of statewide PPE, supplies, equipment, and medicine needs and must be prepared to contribute as necessary.

e. Guidelines developed by the Centers for Disease Control and Prevention, the Centers for Medicare and Medicaid Services, the West Virginia Department of Health and Human Resources and its agencies, and other regulatory agencies will be followed.

2. OHFLAC shall review submitted applications to ensure the applicant hospital or ambulatory surgical center has certified that it has satisfied the foregoing criteria and, upon a determination by OHFLAC that the applicant has certified that it satisfies such criteria, OHFLAC shall provide approval to such hospital or ambulatory surgical center of its ability to resume more urgent elective medical procedures pursuant to this Order.

3. Hospitals and ambulatory surgical centers that have applied to and received approval from OHFLAC may resume more urgent elective medical procedures no earlier than April 28, 2020.

4. The West Virginia Department of Health and Human Resources, with the assistance and coordination of other relevant state agencies, will work with hospitals and ambulatory surgical centers to help provide support for any testing needed at such facilities.

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

DONE at the Capitol in the City of Charleston, State of West Virginia, this Twentieth day of April, in the year of our Lord, Two Thousand Twenty in the One Hundred Fifty-seventh year of the State.

GOVERNOR

By the Governor

SECRETARY OF STATE