MICHELLE LUJAN GRISHAM
GOVERNOR

NEW MEXICO DEPARTMENT OF HEALTH

KATHYLEEN M. KUNKEL
CABINET SECRETARY

PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
CABINET SECRETARY KATHYLEEN M. KUNKEL

MARCH 24, 2020

Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19

WHEREAS, on January 30, 2020, the World Health Organization announced the emergence of a novel Coronavirus Disease 2019 ("COVID-19") that had not previously circulated in humans, but has been found to have adapted to humans such that it is contagious and easily spread from one person to another and one country to another;

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency as a precautionary tool to facilitate preparation and availability of resources to assure that the federal government had appropriate resources to combat the spread of the COVID-19 virus in our nation through its support of state and community-led preparedness and response efforts;

WHEREAS, on March 11, 2020, the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

WHEREAS, on March 11, 2020, Michelle Lujan Grisham, the Governor of the State of New Mexico, declared in Executive Order 2020-004 ("EO 2020-004") that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked the All Hazards Emergency Management Act by directing all cabinets, departments and agencies to comply with the directives of the declaration and the further instructions of the Department of Health;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from the COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, the United States Centers for Disease Control and Prevention ("CDC") recommends the use of personal protective equipment (PPE)—including gloves, medical masks, goggles or a face shield, gowns, and in some cases respirators (N95 or FFP2 standard or equivalent) and aprons—for patients and health care workers as an essential part of treating and preventing the spread of COVID-19;

WHEREAS, due to delayed deliveries of PPE from the Strategic National Stockpile, the high demand for PPE throughout the United States and globally, and other factors related to the COVID-19 pandemic, there is both a statewide and national shortage of PPE and the PPE supplies of New Mexico's hospitals, health care facilities, and first responders are critically low; 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 "inspect, regulate or ration health care supplies" if "a public health emergency results in a statewide or regional shortage of health care supplies." NMSA 1978, § 12-10A-6(A)(2), (B). This authority permits the Department of Health to "control, restrict and regulate the allocation, sale, dispensing or distribution of health care supplies." § 12-10A-6(B). The Department of Health also has authority to "control and abate the causes of disease, especially epidemics" and to "maintain and enforce rules for the control of conditions of public health importance." NMSA 1978, § 24-1-3(C) & (Q).

NOW, THEREFORE, I, Kathyleen M. Kunkel, 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 through the Public Health Emergency declared in EO 2020-004 and by virtue of the Governor's direction under her power to "provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized," NMSA 1978, § 12-10-4(B)(3), do hereby **ORDER** and **DIRECT** as follows:

1. No health care provider or wholesale medical supplier in New Mexico with an inventory of PPE may reduce its inventory of PPE by selling, allocating, or otherwise distributing it without prior approval from the New Mexico Department of Health. The provision does not apply to the use of PPE or to limited over-the-counter sales to individuals.

2. No health care provider or wholesale medical supplier in New Mexico may sell, allocate, or otherwise distribute PPE outside of New Mexico without prior approval from the New Mexico Department of Health. This provision does not restrict or subject to prior approval any federally-required distributions or allocations of PPE.

3. Within three (3) business days of this Order, each healthcare provider and wholesale medical supplier in New Mexico with an inventory of PPE shall make a report to the New Mexico Department of Health describing its inventory of PPE.

4. For purposes of this Order, PPE includes: gloves, medical masks, goggles or a face shield or other eye protection used by health care providers, respirators (N95 or FFP2 standard or equivalent), and aprons used by health care providers.

5. For purposes of this Order, health care provider includes all healthcare professionals identified in NMSA 52-4-1 (2007).

6. 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 remain in effect for the duration of Executive Order 2020-004. This Order may be renewed consistent with any direction from the Governor.

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

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 24TH DAY OF MARCH 2020

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

Kathyleen M. Kunkel

KATHYLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH