State of New Jersey
DEPARTMENT OF HEALTH
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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

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, as of April 11, 2020, there were at least 58,151 positive cases of COVID-19 in New Jersey and at least 2,183 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 will likely exceed the number of available ventilators and other medical equipment available; and

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, which is adapted from the Pittsburgh Model Policy; 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, Executive Order No. 112 (2020) confers immunity on healthcare providers for certain acts or omissions in the course of providing services in support of the State's COVID-19 response, but such immunity may not provide adequate protection from liability for acts or omissions pursuant to, and consistent with, a facility's resource-allocation policy; 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 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 EO 103 pursuant to the New Jersey Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., unless modified, supplemented and/or rescinded, but the immunity conferred by Paragraph 2 of this Directive shall continue in perpetuity.

Judith Persichilli

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

4/11/2020
Date