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

APRIL 30, 2020

Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries

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), the potential for displacements of persons, and potential 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 supply chain interference 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;

WHEREAS, local, national, and global health experts predict that the expected continued rise in cases of COVID-19 will strain the capacity and resources of health care providers, including available space and equipment in health care facilities and the availability of PPEs to health care professionals;

WHEREAS, in recent weeks the State of New Mexico has significantly increased its stockpile of PPE and has managed the rise in COVID-19 cases to such an extent as to lower the anticipated amount of PPE that will be needed and to allow a gradual easing of restrictions on non-essential medical procedures; 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 "utilize, secure or evacuate health care facilities for public use." NMSA 1978, § 12-10A-6(A)(1). The Department of Health is also permitted to "regulate or ration health care supplies" if "a public health emergency results in a statewide or regional shortage of health care supplies." § 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 subsequently renewed thereafter, 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. All hospitals and other health care facilities, ambulatory surgical facilities, dental, orthodontic and endodontic offices in the State of New Mexico are prohibited from providing non-essential health care services, procedures, and surgeries, except under the conditions provided below.

2. Medical practitioners may gradually resume operations in compliance with guidelines provided by the New Mexico Department of Health. The guidelines shall be entitled "Reopening Guidelines: Medical Offices." The guidelines shall be publicly available on the Department of Health website and are subject to change as circumstances warrant.

3. Hospitals and ambulatory surgical facilities may gradually resume operations in compliance with guidelines provided by the New Mexico Department of Health. The guidelines shall be called "Medically Necessary Surgery and Procedural Guidelines." The guidelines shall be publicly available on the Department of Health website and are subject to change as circumstances warrant.

4. To reopen or expand ambulatory or inpatient surgery, a facility **must affirm past compliance with all current Public Health Emergency Orders** and demonstrate the following:

(I) The facility can continue to comply with Department of Health regulations and Public Health Emergency Order, including but not limited to:

a. Complying with the instructions in "Medically Necessary Surgery and Procedural Guidelines"

b. Reporting daily to the Department via the HAvBED system regarding:
   i. PPE supply
   ii. Hospital bed availability of general medical/surgery beds, ICU beds, and ventilators by type
   iii. Hospital capacity of behavioral health beds

c. Cooperating with Department requirements for reporting of airway medication management pharmaceutical supplies

d. Demonstrating full implementation of PPE conservation and decontamination strategies

e. Reporting daily COVID testing activity via the Department's website (where applicable)

f. Using the Department's Centralized Call Center for any transfers of COVID-19 patients

g. Restricting visitors in healthcare settings during a state of emergency

h. Maintaining an adequate staffing plan to support inpatient facilities as a first priority (where applicable)

(II) **The Facility has developed, enacted, and will monitor a plan to ensure that all employees, medical staff, and patients will be protected by the following COVID-19-related precautions:**

a. The facility monitors employees, medical staff, and prospective surgical patients for symptoms of COVID-19

b. The facility requires employees and medical staff to stay at home when they are sick

c. The facility requires employees, medical staff, and prospective surgical patients wash their hands frequently

d. The facility requires employees and medical staff to avoid touching their eyes, nose, and mouth with unwashed hands

e. The facility requires employees, medical staff, and prospective surgical patients cover cough or sneeze with a tissue, then throw the tissue in the trash

f. The facility requires strict adherence to cleaning and disinfection protocols

g. The facility requires employees, medical staff, and prospective surgical patients to maintain a six-foot distance from others whenever possible

h. The facility has implemented measures to avoid gatherings of more than five people whenever possible, including closing common waiting areas and cafeterias and/or creating barriers to maintain social distancing

i. The facility has implemented measures to protect vulnerable populations by prioritizing methods to provide services to them without face-to-face contact when possible; "vulnerable populations" includes, at a minimum: adults over 64 years old, people with asthma, people with chronic lung conditions, people with immune deficiency and those receiving cancer treatment, people with serious heart disease, people with diabetes, on dialysis, people with severe obesity, people with chronic liver disease, people living in nursing facilities and other congregate settings, and people experiencing homelessness

5. For purposes of this Order, "non-essential health care services, procedures, and surgeries" include those which can be delayed without undue risk to the patient's health. Examples of criteria to consider in distinguishing between essential and non-essential actions include: (a)

threat to a patient's life; (b) threat of permanent dysfunction of an extremity, including teeth, jaws, and eyes; (c) risk of metastasis or progression of staging; and (d) any other factors that will conserve medical resources without creating an undue risk of harm to patients. It is ultimately the role of the practitioner and the patient to determine what treatments and procedures are non-essential under these broad requirements and the determination will vary by patient and over time.

6. This Order's prohibition on non-essential health care services, procedures, and surgeries is not meant to apply to: (a) the provision of emergency medical care or any actions necessary to provide treatment to patients with emergency or urgent medical needs; (b) any surgery or treatment that would result in a patient worsening (e.g., removing a cancerous tumor or a surgery intended to manage an infection); and (c) the full suite of family planning services.

7. 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 the public health emergency first declared in Executive Order 2020-004 and any subsequent renewals of that public health emergency. This Order may be renewed consistent with any direction from the Governor.

THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict, including the March 24, 2020 Public Health Emergency Order Imposing Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; Providing Guidance on those Restrictions; and Requiring a Report from Certain Health Care Providers. 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 30TH DAY OF APRIL 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