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GOVERNOR LAURA KELLY

EXECUTIVE ORDER NO. 21-04

Temporary relief from certain tuberculin testing requirements
during state of disaster emergency

WHEREAS, securing the health, safety, and economic well-being of residents of the State of Kansas is this Administration's top priority;

WHEREAS, Kansas is facing a crisis—the pandemic and public health emergency of COVID-19—resulting in illness, quarantines, school closures, and temporary closure of businesses resulting in lost wages and financial hardship to Kansas citizens;

WHEREAS, the United States Departments of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 27,600,000 cases of the illness and more than 486,460 deaths as a result of the illness across the United States;

WHEREAS, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020, and that State of Disaster Emergency continues as a result of extensions approved by the Legislature and the State Finance Council;

WHEREAS, as of this date, there have been over 288,717 positive cases of COVID-19 in Kansas, spread among all 105 counties and 4,521 deaths as a result of the illness;

WHEREAS, persons who reside and work in adult care home settings, as defined by K.S.A. 39-923, will be given to access to vaccines as supplies are available under Phase 1 of Kansas' COVID-19 Vaccination Plan, and persons who reside, attend or work in other congregate settings will be given access to vaccines as supplies are available under Phase 2. Amongst other types of settings included in Phase 2's "congregate settings," such settings may include residential and day services programs for persons with disabilities or the frail and elderly, preschools, school age programs, day care settings, and various residential settings and placements for foster youth;

WHEREAS, the Advisory Committee on Immunization Practices (ACIP) issued interim recommendations for the use Pfizer-BioNTech and Moderna COVID-19 vaccines for prevention of coronavirus disease 2019 (COVID-19) in the United States. Both vaccines are lipid nanoparticle-formulated, nucleoside-modified mRNA vaccines encoding the prefusion spike glycoprotein of SARS-CoV-2, the virus that causes COVID-19.

WHEREAS, on November 20, 2020, the Centers for Disease Control and Prevention ("CDC") issued interim clinical guidelines for mRNA vaccines (which apply only to the Pfizer-BioNTech and Moderna COVID-19 vaccines), and the CDC mRNA Immunization Guidelines recommend if the mRNA COVID-19 vaccination has been given, tuberculin ("TB") screening drawing blood for interferon gamma release assay ("IGRA") or utilizing the Tuberculin Skin Test ("TST") should be

deferred until 4 weeks after the Pfizer-BioNTech or Moderna COVID-19 vaccine 2-dose is completed;

WHEREAS, this Administration will do whatever it can to assist Kansans in these challenging times, including providing relief that will help avoid threats to the health, safety, and welfare of Kansans by following CDC immunization guidelines for tuberculin testing.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, including the authority granted me by K.S.A. 48-924 and K.S.A. 48-925(b), (c)(1), and (c)(11), in order to mitigate the effects of COVID-19, I hereby direct and order the following:

1. Definitions

    a. "Adult care homes" or "facility" as used in this order includes any nursing facility, nursing facility for mental health, intermediate care facility for people wit intellectual disability, assisted living facility, residential healthcare facility, home plus, boarding care home and adult day care facility; all of which are classifications of adult care homes and are required to be licensed by the secretary for aging and disability services in accordance with K.S.A. 39-923(a).

    b. "Congregate setting" or "program" as used in this order includes only those congregate settings identified in Phase 2 of Kansas' COVID Vaccination Plan licensed by the Kansas Department for Health and Environment ("KDHE") or the Kansas Department for Aging and Disability Services ("KDADS"), and if such State agencies require tuberculin testing of recipients, staff or unpaid persons as a requirement to entry or onboarding.

    c. "Staff" as used in this order includes employees, consultants, contractors, volunteers, and caregivers who provide care to residents of an adult care home, and students in such adult care home's nurse aide training programs or from affiliated academic institutions. "Staff" shall also include employees, consultants, contractors, volunteers, and caregivers who provide care to recipients of services offered in a congregate setting.

    d. "Resident" as used in this order shall include all residents of adult care homes as defined by K.S.A. 39-923(a).

    e. "Recipient" shall include persons who receive services in a congregate setting only if such persons are required by KDHE or KDADS to receive tuberculin testing for admission or receipt of the services offered by the program.

2. TB Testing of Staff and Residents in Adult Care Homes and Congregate Settings

    a. According to the CDC Interim mRNA Immunization Guidelines, inactive vaccines do not interfere with TB test results, and there is no immunologic reason to believe either a TST or IGRA tuberculin test would affect the safety or effectiveness of

mRNA COVID-19 vaccines. There is no data to inform the impact of the COVID-19 mRNA vaccines on either the TST or IGRA tuberculin test for infection.

b. At the time of entry or onboarding, the CDC Interim mRNA Immunization Guidelines recommend that TB symptom screening be performed on all staff, residents and applicable recipients. If the facility or program is utilizing the IGRA, the blood draw for the interferon gamma release assay should be done prior to the COVID-19 vaccination. If the facility or program is utilizing the TST, the skin test should be placed prior to the COVID-19 vaccination. If the mRNA COVID-19 vaccination has been given and TB testing needs to be performed, defer the TST or IGRA until 4 weeks after the COVID-19 vaccine 2-dose completion. Staff, residents, and recipients who have received the COVID-19 vaccination should weigh the risks and benefits of delaying TST/IGRA tuberculin testing with their medical providers.

c. K.A.R. 28-4-126(c), applicable to preschools, day care homes or child care centers licensed by the Kansas Department of Health and Environment, that requires tuberculin testing of each person living, working or regularly volunteering in such preschool, day care home or child care center is suspended. During the period K.A.R. 28-4-126(c) is suspended, tuberculin testing for residents, recipients and staff of preschools, day care homes and child care centers shall be conducted in accordance with the protocols established by the CDC Interim mRNA Immunization Guidelines described in paragraph 2(b). The requirements of K.A.R. 28-4-126(c)(2) for notification to the Kansas Department of Health and Environment of any significant exposure to an active case of tuberculosis, or symptoms compatible with tuberculosis develop, shall otherwise be effective.

d. K.A.R. 28-4-126(c) and K.A.R. 28-4-126(e), applicable to group boarding homes and residential facilities licensed by the Kansas Department for Children and Families, that requires tuberculin testing of each person living, working or regularly volunteering in such group boarding home or residential facility is suspended. During the period K.A.R. 28-4-126(c) and K.A.R. 28-4-126(e) are suspended, tuberculin testing for residents, recipients and staff of group boarding homes and residential facilities shall be conducted in accordance with the protocols established by the CDC Interim mRNA Immunization Guidelines described in paragraph 2(b). The requirements of K.A.R. 28-4-126(c)(2) for notification to the Kansas Department of Health and Environment of any significant exposure to an active case of tuberculosis, or symptoms compatible with tuberculosis develop, shall otherwise be effective.

e. K.A.R. 28-4-291(c)(2), applicable to attendant care centers licensed by the Kansas Department for Children and Families, that requires each attendant shall present written proof of freedom from active tuberculosis is suspended. During the period 28-4-291(c)(2) is suspended, tuberculin testing for attendants of attendant care centers shall be conducted in accordance with the protocols established by the CDC Interim mRNA Immunization Guidelines described in paragraph 2(b).

f. K.A.R. 28-4-356(b)(2)(C) and K.A.R. 28-4-356(d)(4)(5)(6), applicable to detention and secure care centers and staff secure facilities licensed by the Kansas Department for Children and Families, that requires tuberculin testing of each person living, working or regularly volunteering in such detention or secure care center and staff secure facility is suspended. During the period K.A.R. 28-4-356(b)(2)(C) and K.A.R. 28-4-356(d)(4)(5)(6), are suspended, tuberculin testing for staff, volunteers, and residents of a detention or secure care center or staff secure facility shall be conducted in accordance with the protocols established by the CDC Interim mRNA Immunization Guidelines described in paragraph 2(b). The requirements of K.A.R. 28-4-356(d)(4)(5) for notification to the Kansas Department of Health and Environment of any significant exposure to an active case of tuberculosis, or symptoms compatible with tuberculosis develop, shall otherwise be effective.

g. K.A.R. 28-4-590(c)(1), applicable to school age programs licensed by the Kansas Department of Health and Environment, that requires a Mantoux tuberculin test when an operator, program director, staff member, child or youth in such program is exposed to an active case of tuberculosis or, if the location of the program is in an area identified by the local health department or the Secretary of KDHE as a high-risk area for tuberculosis exposure, is suspended. During the period K.A.R. 28-4-590(c)(1) is suspended, tuberculin testing for residents, recipients and staff of school age programs shall be conducted in accordance with the protocols established by the CDC Interim mRNA Immunization Guidelines described in paragraph 2(b). The requirement of K.A.R. 28-4-590(c)(1) that such individuals shall obtain a chest x-ray if there is exposure to an active case of tuberculosis and all other provisions of K.A.R. 28-4-590(c) shall otherwise be effective.

h. K.A.R. 28-4-819(e)(1), applicable to family foster home licensed by the Kansas Department for Children and Families, that requires tuberculin testing of each person living, working or regularly volunteering in such family foster home is suspended. During the period K.A.R. 28-4-819(e)(1) is suspended, tuberculin testing for residents, and youth in placement of a family foster home shall be conducted in accordance with the protocols established by the CDC Interim mRNA Immunization Guidelines described in paragraph 2(b). The requirements of K.A.R. 28-4-819(e)(3) for notification to the Kansas Department of Health and Environment of any significant exposure to an active case of tuberculosis, or symptoms compatible with tuberculosis develop, shall otherwise be effective.

i. K.A.R. 28-4-1259(b)(7)(A) and KAR 28-4-1259(f)(5)(A)(B), applicable to staff secure facilities licensed by the Kansas Department for Children and Families, that requires tuberculin testing of each person living, working or regularly volunteering in such staff secure facility are suspended. During the period K.A.R. 28-4-1259(b)(7)(A) and KAR 28-4-1259(f)(5)(A)(B) are suspended, tuberculin testing for staff, volunteers and residents off a staff secure facility shall be conducted in accordance with the protocols established by the CDC Interim mRNA

Immunization Guidelines described in paragraph 2(b). The requirements of K.A.R. 28-4-1259((7)(D) and K.A.R. 28-4-1259(f)(5)(A) for notification to the Kansas Department of Health and Environment of any significant exposure to an active case of tuberculosis, or symptoms compatible with tuberculosis develop, shall otherwise be effective.

j. K.A.R. 28-39-161(b)(3), applicable to adult care homes licensed by the Kansas Department for Aging and Disability Services, that requires tuberculosis skin testing to be administered to each new resident and staff as soon as residency or employment begins, unless the resident or staff has documentation of a previous significant reaction is suspended. During the period K.A.R. 28-39-161(b)(3) is suspended, tuberculin testing for residents and staff of adult care homes shall be conducted in accordance with the protocols established by the CDC Interim mRNA Immunization Guidelines described in paragraph 2(b). The requirements of K.A.R. 28-39-161(b)(3) for each facility to follow the CDC recommendations for prevention and control of tuberculosis shall otherwise be effective.

k. K.A.R. 28-39-163(h)(3), applicable to adult care homes licensed by the Kansas Department for Aging and Disability Services, that requires tuberculosis testing for each professional staff before employment or not later than seven days after employment is suspended. During the period K.A.R. 28-39-163(h)(3) is suspended, tuberculin testing for residents and staff of adult care homes shall be conducted in accordance with the protocols established by the CDC Interim mRNA Immunization Guidelines described in paragraph 2(b). The requirement of K.A.R. 28-39-161(b)(3) for each facility to perform health screening for each professional staff before employment or not later than seven days after employment is otherwise effective.

l. K.A.R. 28-51-103(c)(6), applicable to home health aides licensed by the Kansas Department of Health and Environment, that requires evidence in the personnel records of a negative tuberculin skin test or chest x-ray upon employment is suspended. During the period K.A.R. 28-51-103(c)(6) is suspended, tuberculin testing for home health aides shall be conducted in accordance with the protocols established by the CDC Interim mRNA Immunization Guidelines described in paragraph 2(b). The requirements applicable to home health aides of K.A.R. 28-39-161(b)(3) for evidence of good health upon employment and subsequent periodic health assessments or physical examinations given in accordance with agency policies after employment shall otherwise be effective.

This document shall be filed with the Secretary of State as Executive Order 21-04. It shall become effective immediately and remain in force until rescinded or until the expiration of the statewide State of Disaster Emergency extended by Section 3 of Senate Bill 14 enacted during the 2021 Legislative Session and as extended by any subsequent enactment or resolution.

THE GOVERNOR'S OFFICE BY THE GOVERNOR Laura Cole

DATED 2.19.21

FILED
FEB 19 2021
SCOTT SCHWAB
SECRETARY OF STATE

Secretary of State

Assistant Secretary of State