State of New Mexico

Michelle Lujan Grisham
Governor

EXECUTIVE ORDER 2020-025

DIRECTING ALL EXECUTIVE AGENCIES TO AFFORD A PRESUMPTION OF A COMPENSABLE OCCUPATIONAL DISEASE AND TO AWARD SERVICE CREDIT TO CERTAIN QUALIFYING STATE EMPLOYEES AND VOLUNTEERS

On March 11, 2020, I issued Executive Order 2020-004, which declared a public health emergency due to the spread of a novel coronavirus ("COVID-19") in New Mexico and invoked other emergency powers under the law to deal with the spread of COVID-19. On April 6, 2020, I issued Executive Order 2020-022, which renewed the statewide public health emergency through April 30, 2020 and my emergency powers under the law.

The virus which causes COVID-19 is highly contagious and can easily be transferred through person-to-person contact for a period of approximately two weeks after a person is infected. The virus has also shown an ability to remain viable for significant periods of time in the air and on surfaces.

COVID-19's ability to spread rapidly through the population is borne out by its exponential spread in New Mexico despite significant and early social distancing measures employed by our State. As of April 20, 2020, approximately six weeks after the first confirmed cases of COVID-19 in New Mexico, the New Mexico Department of Health counts 1,971 positive cases and 58 COVID-19-related deaths in our State.

Professionals who provide direct care or assistance to patients infected with COVID-19 are exposed to the virus causing COVID-19 as a natural incident of their occupations and carry a far

greater risk of contracting COVID-19 than the general public due to this significant and inevitable exposure in the workplace. Other professionals who work in environments where direct care, assistance, or housing is provided to patients with COVID-19 are also exposed to the virus causing COVID-19 as a natural incident of their occupations and carry a far greater risk of contracting COVID-19 than the general public due to this significant and inevitable exposure in the workplace.

The New Mexico Occupational Disease Disablement Law ("Law"), NMSA 1978, §§ 52-3-1 to -60, permits workers to obtain compensation, medical care, and other benefits that are necessitated by an illness contracted through their occupation. The Law applies to the State and its employees. § 52-3-2(A). The Law defines a compensable occupational disease as "any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such." § 52-3-33. New Mexico courts have interpreted this provision to mean that, to be compensable under the Law, the disease must be a natural incident of a particular occupation and the conditions causing the disease were encountered in that employment to a degree beyond that prevailing in employment generally. See, e.g., Herrera v. Fluor Utah, Inc., 1976-NMCA-045, ¶ 6, 89 N.M. 245, 550 P.2d 144.

The All Hazards Emergency Management Act authorizes me to "provide those resources and services necessary to minimize economic or physical harm until a situation becomes stabilized" and to take any "action necessary to protect the public health, safety and welfare." NMSA 1978, § 12-10-4(B)(3). This includes the authority to direct agencies to exercise their lawful discretion in a manner which is fair and just under circumstances existing because of a statewide emergency. That Act also authorizes me to issue necessary orders and to direct agencies to perform their lawful duties to assist during an emergency response. NMSA 1978, § 12-10-4(B)(2); NMSA 1978, § 12-10-10(A).

Now, for the above reasons, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby order and direct as follows:

1. In processing or responding to workers' compensation claims as an employer or an insurer, I direct all state executive agencies to employ a presumption that certain agency employees and eligible volunteers who contracted COVID-19 suffered a compensable occupational disease under the New Mexico Occupational Disease Disablement Law.

2. The presumption should be applied to all agency employees and eligible volunteers who contract COVID-19 within two weeks of providing direct assistance or care to COVID-19 patients, or within two weeks of working in any capacity inside a facility that provides direct assistance, care, or housing to COVID-19 patients. As used in this Order, the term "eligible volunteer" means any volunteer or contractor temporarily assisting the State during the COVID-19 public health emergency who is otherwise eligible for compensation under the New Mexico Occupational Disease Disablement Law.

3. Some examples of employees who should be afforded this presumption include but are not limited to emergency medical technicians and other first responders, volunteer and paid medical personnel, administrative and custodial staff at COVID-19-specific care centers, and law enforcement officers.

4. I further direct that all State agency employers treat the provision of direct assistance or care to individuals infected with COVID-19 as "inherently dangerous circumstances" for purposes of awarding service credit under NSMA 1978, Section 10-11-6.1 for all employees who contract COVID-19 through their employment and qualify for service credit under that

provision. Accordingly, the State agency employer shall comply with all obligations under Section 10-11-6.1(A) with respect to those employees.

5. I further encourage local government employers and/or insurers to adopt the presumptions that this Order requires of State employers and insurers.

6. This Order is not intended to alter or supersede any procedures or requirements set forth under the New Mexico Occupational Disease Disablement Law or the Public Employees Retirement Act.

7. Any action taken by a State agency pursuant to this Order is at the sole discretion of the agency and is not subject to any appeal or review process. This Order does not create an individual right or give rise to an enforceable cause of action.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until the Governor rescinds it.

ATTEST:

Maggie Toulouse Oliver

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 23RD DAY OF APRIL 2020

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

Michelle Lujan Grisham

MICHELLE LUJAN GRISHAM
GOVERNOR