

EXECUTIVE ORDER NO. 332

WHEREAS, on March 9, 2020, I issued Executive Order No. 103, declaring the existence of a Public Health Emergency, pursuant to the Emergency Health Powers Act ("EHPA"), N.J.S.A. 26:13-1 et seq., and a State of Emergency, pursuant to the New Jersey Civilian Defense and Disaster Control Act ("Disaster Control Act"), N.J.S.A. App A:9-33 et seq., in the State of New Jersey for Coronavirus disease 2019 ("COVID-19"), the facts and circumstances of which are adopted by reference herein; and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, 191, 200, 210, 215, 222, 231, 235, and 240, which were issued each month between April 7, 2020 and May 14, 2021, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency in effect at the time continued to exist; and

WHEREAS, New Jersey made significant progress in responding to COVID-19 and mitigating its devastating effects, in particular in light of the advent of several effective vaccines that, among other things, had significantly reduced the likelihood of both contracting and transmitting the variants of COVID-19 that were present in the United States at the time; and

WHEREAS, on June 4, 2021, in light of these developments, I signed Assembly Bill No. 5820 into law as P.L.2021, c.103, and issued Executive Order No. 244, which terminated the Public Health Emergency declared in Executive Order No. 103 (2020); and

WHEREAS, Section 4 of P.L.2021, c.103 provides that "[t]he termination of the public health emergency declared by the Governor in Executive Order No. 103 (2020), as extended, shall in no way diminish, limit, or impair the powers of the Governor" pursuant to the Disaster Control Act, and that the State of Emergency declared in Executive Order No. 103 (2020) pursuant to that Act "shall remain in effect until terminated by the Governor"; and

WHEREAS, Section 5 of P.L.2021, c.103 specifically provides that “[f]ollowing the termination of the public health emergency declared by the Governor in Executive Order No. 103 (2020), as extended, the Governor, Commissioner of the Department of Health (“DOH”), and the head of any other State agency may issue orders, directives, and waivers pursuant to P.L.2005, c.222 (C.26:13-1 et seq.) related to (1) vaccination distribution, administration, and management, (2) COVID-19 testing, (3) health resource and personnel allocation, (4) data collection, retention, sharing, and access, (5) coordination of local health departments, and (6) implementation of any applicable recommendations of the Centers for Disease Control and Prevention (“CDC”) to prevent or limit the transmission of COVID-19, including in specific settings”; and

WHEREAS, on August 6, 2021, I issued Executive Order No. 252, which requires certain health care and high-risk congregate settings (collectively, “covered settings”) to maintain a policy that requires all covered workers to either provide adequate proof to the covered settings that they have been fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly beginning September 7, 2021; and

WHEREAS, in addition to leaving the prior State of Emergency in effect, nothing in P.L.2021, c.103 prevented the Governor from declaring any new public health emergency under the EHPA, N.J.S.A. 26:13-1 et seq., should the evolving circumstances on the ground require such a declaration; and

WHEREAS, as the CDC has recognized, viruses can change through mutation and mutations can result in variants of the virus, and some variants can spread more easily and quickly than other variants of the same virus, which may lead to more cases of COVID-19, increased strain on healthcare resources, more hospitalizations, and more deaths; and

WHEREAS, since Executive Order No. 244 (2021) took effect, the CDC identified several additional variants of concern of COVID-19 in the United States, including the B.1.617.2 (Delta) variant and the B1.1.529, BA.1, BA.1.1, BA.2, BA.3, BA.4, and BA.5 lineages of the Omicron variant ("Omicron"); and

WHEREAS, although New Jersey was able to end the initial Public Health Emergency on account of the effectiveness of vaccines in reducing transmissibility of COVID-19, the Omicron variant spread more easily than other variants and required additional action to protect the public; and

WHEREAS, on January 11, 2022, I issued Executive Order No. 280, declaring the existence of a new Public Health Emergency, pursuant to the EHPA, N.J.S.A. 26:13-1 et seq., and continuing the State of Emergency declared in Executive Order No. 103 (2020) pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq., in the State of New Jersey due to the surge of cases and hospitalizations tied to the new variants of COVID-19; and

WHEREAS, on January 11, 2022, I issued Executive Order No. 281, extending various orders to ensure the State continues to have the necessary resources in place to respond to the new variants of COVID-19; and

WHEREAS, on January 19, 2022, I issued Executive Order No. 283, requiring covered settings to maintain a policy that requires all covered workers to provide adequate proof to the covered settings that they are up to date with their COVID-19 vaccinations, including a booster dose when eligible; and

WHEREAS, on February 10, 2022, I issued Executive Order No. 288, which declared that the Public Health Emergency declared in Executive Order No. 280 (2022) continued to exist; and

WHEREAS, on March 2, 2022, I issued Executive Order No. 290, clarifying and extending the timeframes within which covered settings must require their covered workers to comply with the vaccination and booster requirements set forth in Executive Order No. 283 (2022); and

WHEREAS, as a result of significant emergency measures taken, the State made considerable progress in combating COVID-19 variants and decreasing key statistics, such as the number of hospitalized patients in the State, the number of daily positive COVID-19 cases, spot positivity, and the rate of transmission; and

WHEREAS, in light of these developments, on March 4, 2022, I issued Executive Order No. 292 terminating the Public Health Emergency declared in Executive Order No. 280 (2022) effective March 7, 2022, while continuing the State of Emergency declared in Executive Order No. 103 (2020); and

WHEREAS, Executive Order No. 292 (2022) stated that Executive Order Nos. 111, 112, and 207 (2020), Nos. 252, 253, 264, and 271 (2021) and Nos. 283 and 290 (2022) remain in full force and effect pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq., except that Paragraphs 11 and 13 of Executive Order No. 264 (2021) were rescinded; and

WHEREAS, on April 13, 2022, consistent with the authority I retained under the Disaster Control Act and Section 5 of P.L.2021, c.103, I issued Executive Order No. 294, clarifying the vaccination and booster requirements applicable to workers in certain covered settings as set forth in Executive Order No. 283 (2022) and Executive Order No. 290 (2022); and

WHEREAS, throughout the course of the COVID-19 pandemic, and even as federal emergency declarations relating to COVID-19 have subsequently been rescinded, the U.S. Food and Drug Administration

("FDA") has continually evaluated data regarding both the safety and continued effectiveness of the COVID-19 vaccines; and

WHEREAS, according to the CDC, various treatments and FDA-authorized therapeutics for COVID-19, such as antiviral medications and monoclonal antibodies, that can reduce the likelihood of severe illness and death have become widely available; and

WHEREAS, on August 11, 2022, the CDC issued updated and consolidated COVID-19 guidance for the general population which recognized that high levels of vaccine and infection-induced immunity and the availability of effective treatments and prevention tools have substantially reduced the risk for medically significant COVID-19 illness, and associated hospitalization and death; and

WHEREAS, the CDC's general population guidance observed that as a result of improved circumstances and the availability of multicomponent prevention measures, public health efforts to minimize the impacts of COVID-19 can be tailored to individual and societal health factors, with a focus on reducing medically significant illness and minimizing the strain on the health care system; and

WHEREAS, in the months that followed, the FDA issued amended Emergency Use Authorizations ("EUAs") for the bivalent Moderna and Pfizer-BioNTech COVID-19 vaccines, which target the original COVID-19 strain as well as Omicron and its subvariants, thereby offering stronger protections against severe illness and death from COVID-19 than the original monovalent COVID-19 vaccines; and

WHEREAS, around the same time, the CDC began issuing additional guidance for specific settings to consider in determining which COVID-19 prevention and mitigation protocols to use and when; and

WHEREAS, on September 23, 2022, the CDC issued updated guidance for health care settings and health care personnel, including long-term care and home health settings, which recommended the use of COVID-19 infection prevention and control measures based on facility- and population-specific factors, and other risk factors for transmission; and

WHEREAS, the CDC's updated infection prevention and control guidance continues to encourage health care settings and personnel to remain up to date with all recommended COVID-19 vaccine doses, but expressly states that routine COVID-19 screening testing is no longer recommended in health care settings; and

WHEREAS, in light of the CDC's updated infection prevention and control guidance for health care settings, and given the State's ability to maintain stable rates on key benchmark statistics, such as the number of hospitalized patients in the State, the number of daily positive COVID-19 cases throughout the winter months of 2023, and other metrics, on April 3, 2023, I issued Executive Order No. 325, which, in pertinent part, lifted the COVID-19 testing requirements for health care settings, as had been required pursuant to Executive Order No. 252 (2021) and Nos. 283, 290, and 294 (2022), and Paragraph 2 of Executive Order No. 281 (2022); and

WHEREAS, due to ongoing concerns with the vulnerability of our State's health care workforce and infrastructure, and the continued application of the federal Centers for Medicare & Medicaid Services ("CMS") Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule (CMS-3415-IFC) ("CMS Rule") requiring most Medicare and Medicaid-certified providers' and suppliers' staff to be vaccinated against COVID-19, Executive Order No. 325 (2023) maintained the requirement that health care settings in New Jersey maintain a policy requiring covered workers

to provide adequate proof that they are up to date with their COVID-19 vaccinations; and

WHEREAS, Executive Order No. 325 (2023) incorporated the definition of "up to date" as set forth in Executive Order No. 294 (2022), providing that covered health care workers are considered "up to date" with their COVID-19 vaccinations if they have received a primary series, which consists of either a 2-dose series of an mRNA COVID-19 or protein subunit vaccine, or a single dose viral vector COVID-19 vaccine, and the first booster dose for which they are eligible as recommended by the CDC; and

WHEREAS, the phrase "up to date" with COVID-19 vaccinations, as set forth in Executive Order No. 325 (2023), was also qualified and informed by the scope of EUAs for the COVID-19 vaccines as authorized and amended by the FDA over time; and

WHEREAS, shortly after issuing Executive Order No. 325 (2023), on April 18, 2023, the FDA issued amended EUAs of the COVID-19 vaccines EUAs to remove authorization of monovalent Moderna and Pfizer-BioNTech COVID-19 vaccines, and to clarify that most individuals, regardless of prior vaccination status, may receive a single-dose Moderna or Pfizer-BioNTech COVID-19 bivalent mRNA vaccine; and

WHEREAS, in addition, on May 1, 2023, President Biden announced intentions to wind down certain remaining COVID-19 vaccination requirements to coincide with the May 11, 2023 termination of the federal public health emergency, citing a 95% decline in COVID-19-related deaths and a 91% decline in COVID-19-related hospitalizations nationally; and

WHEREAS, on June 5, 2023, CMS issued a Final Rule to formally rescind the CMS Rule, thereby lifting the requirement of most Medicare and Medicaid-certified providers' and suppliers' staff to

be vaccinated against COVID-19 in order to participate in Medicare and Medicaid programs; and

WHEREAS, the Final Rule sets forth an effective date of 60 days from the date of its publication, which will occur on August 4, 2023, but provides that CMS will cease enforcement of the staff vaccination requirements against covered health care facilities immediately; and

WHEREAS, in place of the COVID-19 vaccination requirements, the Final Rule will use quality reporting and value-based incentive programs to encourage ongoing COVID-19 vaccinations in health care settings; and

WHEREAS, given the FDA's amended EUAs of the COVID-19 vaccines, as well as CMS's withdrawal of COVID-19 vaccination requirements for CMS-covered health care facilities and other CDC guidance, it is necessary to update and streamline the State's policy requiring COVID-19 infection prevention and control in health care settings, as the State continues the next phase of the COVID-19 response; and

WHEREAS, New Jersey has achieved high levels of vaccine and infection-induced immunity, and our health care systems are equipped with multicomponent strategies to prevent and mitigate the impacts of COVID-19, including through COVID-19 vaccinations and authorized therapeutic medications, and targeted COVID-19 testing and isolation strategies; and

WHEREAS, while health care settings remain encouraged to promote COVID-19 vaccinations amongst their staff, visitors, and patient populations, the CDC's latest guidance supports a flexible approach of COVID-19 infection prevention and control that allows health care facilities to adapt their policies as needed based on individual circumstances; and

WHEREAS, given the State's progress in substantially reducing the strain on our health care infrastructure and workforce, and for other reasons set forth herein, the State can responsibly lift the requirement that health care settings maintain a policy requiring covered workers to provide proof that they are up to date with their COVID-19 vaccinations; and

WHEREAS, consistent with CMS's decision to lift COVID-19 vaccination requirements while encouraging COVID-19 vaccinations and other hospital quality reporting, New Jersey must continue to monitor for COVID-19 cases, coverage, clusters, and outbreaks in health care settings in order for DOH to understand and track COVID-19, as the State continues the next phase of the COVID-19 response; and

WHEREAS, the Constitution and statutes of the State of New Jersey, including P.L.2021, c.103, N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:24, and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The COVID-19 vaccination requirements for health care settings, as required or extended by Executive Order No. 252 (2021), Executive Order Nos. 283, 290, and 294 (2022), Paragraph 2 of Executive Order No. 281 (2022), and Executive Order No. 325 (2023) are hereby rescinded.

2. Nothing in this Order shall prevent covered settings from choosing to maintain a COVID-19 vaccination or testing policy, including but not limited to, one implemented pursuant to Executive Order No. 252 (2021), Executive Order Nos. 283, 290, and 294

(2022), Paragraph 2 of Executive Order No. 281 (2022), and Executive Order No. 325 (2023), or from establishing a COVID-19 vaccination or testing policy that includes additional or stricter requirements.

3. The Commissioner of DOH is hereby authorized to issue a directive related to the terms outlined in this Order, which may include, but not be limited to, any requirements for reporting COVID-19 vaccination data to DOH.

4. For purposes of this Order, consistent with the definition provided by Executive Order Nos. 252 (2021) and 283 (2022), covered settings shall be defined as follows: "Health care settings" shall include acute, pediatric, inpatient rehabilitation, and psychiatric hospitals, including specialty hospitals, and ambulatory surgical centers; long-term care facilities; intermediate care facilities; residential detox, short-term, and long-term residential substance abuse disorder treatment facilities; clinic-based settings like ambulatory care, urgent care clinics, dialysis centers, Federally Qualified Health Centers, family planning sites, and Opioid Treatment Programs; and community-based healthcare settings including Program of All-inclusive Care for the Elderly, pediatric and adult medical day care programs, and licensed home health agencies and registered health care service firms operating within the State.

5. For purposes of this Order, consistent with the definition provided by Executive Order Nos. 252 (2021) and 283 (2022), "covered workers" shall include employees, both full- and part-time, contractors, and other individuals working in covered settings, including individuals providing operational or custodial services or administrative support.

6. Any provisions of Executive Order No. 252 (2021), Executive Order Nos. 281, 283, 290, and 294 (2022), and Executive Order No. 325 (2023) that are inconsistent with this Order are superseded.

7. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order, and to cooperate fully with any Administrative Orders issued pursuant to this Order.

8. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

9. This Order shall take effect immediately and shall remain in effect until revoked or modified by the Governor.

GIVEN, under my hand and seal this
12th day of June,
Two Thousand and Twenty-
three, and of the
Independence of the United
States, the Two Hundred and
Forty-Seventh.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor