

EXECUTIVE ORDER NO. 325

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

COVID19, 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 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 now 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, the CDC's general population guidance further recognized that in general community settings, local public health officials and jurisdictions are equipped with a host of COVID-19 prevention strategies and localized data to decide which mitigation protocols to use and when, based on COVID-19 Community Levels and setting-specific factors; and

WHEREAS, in the months that followed, the FDA began issuing amended Emergency Use Authorizations ("EUAs") of bivalent Moderna and Pfizer-BioNTech COVID-19 vaccines to expanded age groups, and the CDC began issuing additional guidance for specific settings

where risk of COVID-19 transmission is higher than compared with the general population; 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 certain infection prevention and control measures based on facility- and population-specific factors; 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 recommended that health care settings implement infection prevention and control measures based on a risk-based assessment, including when COVID-19 Community Transmission Levels are high, or where additional risk factors for transmission are present; and

WHEREAS, the CDC's updated infection prevention and control guidance expressly states that routine COVID-19 screening testing is no longer recommended in health care settings; and

WHEREAS, on November 29, 2022, the CDC issued updated guidance for high-risk congregate settings, similarly recommending that high-risk congregate settings tailor their COVID-19 prevention strategies to various circumstances, including the needs of any residents who are at greater risk for severe health outcomes, any structural or operational features that limit the facility's COVID-19 prevention capabilities, and any rise in COVID-19 Community Levels in the relevant area; and

WHEREAS, the CDC's updated guidance for high-risk congregate settings continues to encourage staff, residents, and visitors 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 high-risk congregate settings; and

WHEREAS, New Jersey has administered over 20 million doses of the COVID-19 vaccine in the State to date, with over 8 million or 93% of New Jerseyans having received at least one dose of the vaccine; and

WHEREAS, over the last six months, the State has experienced stable rates on key benchmark statistics, such as the number of hospitalized patients, patients in intensive care, and ventilators in use, the spot positivity of COVID-19 tests, and the virus's reproductive rate; and

WHEREAS, as a result of significant public health efforts, the number of daily COVID-19 hospitalizations is down over 90% since the peak of the Omicron surge in January 2022; and

WHEREAS, New Jersey public health officials observed a relatively mild 2023 winter in key statistical areas of COVID-19 monitoring, such as the number of hospitalized patients in the State and the number of daily positive COVID-19 cases, when compared to the 2021 and 2022 winter seasons; and

WHEREAS, in light of the CDC's updated guidance, and given the progress the State has made to date, the State can continue to responsibly lift the limited number of COVID-19 requirements still in place, including the requirement that high-risk congregate settings maintain a policy requiring covered workers to provide proof that they are up to date with their COVID-19 vaccinations or otherwise submit to weekly or twice weekly COVID-19 testing, and the requirement that health care settings require unvaccinated covered workers to submit to weekly or twice weekly COVID-19 testing; and

WHEREAS, despite the extensive progress made in combatting COVID-19, and the ability to lift certain mitigation protocols, there remains a critical need to ensure the safety of health care workers and vulnerable patient populations seeking care in health

care settings, and to safeguard against potentially severe health outcomes and death in those settings where enhanced infection prevention and control measures are needed most; and

WHEREAS, waning immunity among health care workers increases their susceptibility to the virus and can place further strain on the State's health care workforce, threatening the ability to provide critical care to individuals; and

WHEREAS, as of the date of this Order, the federal Centers for Medicare & Medicaid Services ("CMS") Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule (CMS-3415-IFC) continues to require 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, as the U.S. Supreme Court has recognized, there is nothing unusual about continuing to require vaccinations in such health care settings, even outside the posture of an emergency, and that "[v]accination requirements are a common feature of the provision of healthcare in America: Healthcare workers around the country are ordinarily required to be vaccinated for diseases such as hepatitis B, influenza, and measles, mumps, and rubella," Biden v. Missouri, 142 S. Ct. 647 (2022) (citing CDC, State Healthcare Worker and Patient Vaccination Laws (Feb. 28, 2018)); and

WHEREAS, vaccination requirements are common in New Jersey in health care settings, even outside the posture of an emergency, see, e.g., N.J.S.A. 26:2H-18.79 (requires annual influenza vaccine for all workers at "health care facilities"); and

WHEREAS, continuing to require health care workers to be up to date with their COVID-19 vaccinations, including the first booster dose for which they are eligible, can help prevent outbreaks and reduce transmission to vulnerable individuals who may be at higher risk of severe disease; and

WHEREAS, continued surveillance of COVID-19 cases, clusters, and outbreaks in covered settings is necessary 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 and testing requirements for high-risk congregate settings, as required or extended by Executive Order No. 252 (2021) and Nos. 283, 290, and 294 (2022), and Paragraph 2 of Executive Order No. 281 (2022), are hereby rescinded.

2. Executive Order No. 252 (2021) and Nos. 283, 290, and 294 (2022), and Paragraph 2 of Executive Order No. 281 (2022) are hereby modified to provide that health care settings shall no longer be required to maintain a policy that requires covered workers to submit to weekly or twice weekly COVID-19 testing under the circumstances outlined in such Executive Orders.

3. Health care settings shall continue to be required to maintain a policy that requires covered workers to provide adequate proof that they are up to date with their COVID-19 vaccinations pursuant to Executive Order No. 252 (2021) and Nos. 283, 290, and 294 (2022), and Paragraph 2 of Executive Order No. 281 (2022).

4. 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) and Nos. 283, 290, and 294 (2022), or from establishing a COVID-19 vaccination or testing policy that includes additional or stricter requirements.

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

6. 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. "High-risk congregate settings" include State and county correctional facilities; all congregate care settings operated by the Juvenile Justice Commission, which includes secure care facilities and residential community homes; licensed community residences for individuals with intellectual and developmental disabilities ("IDD") and traumatic brain injury ("TBI"); licensed community residences for adults with mental illness; certified day programs for individuals with IDD and TBI; and group homes and psychiatric

community homes licensed by the Department of Children and Families.

7. 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.

8. For purposes of this Order, consistent with the definition provided by Executive Order No. 294 (2022), a covered worker of a health care setting shall be 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. Covered workers of health care settings will only be considered up to date with their vaccinations when they have received a COVID-19 vaccine that is currently authorized for emergency use by the FDA or the World Health Organization, or that are approved for use by the same. Covered workers of health care settings who are not up to date with their vaccinations, or for whom vaccination status is unknown or who have not provided sufficient proof of documentation, must be considered noncompliant for purposes of this Order.

9. The policies adopted by health care settings pursuant to this Order must provide appropriate accommodations, to the extent required by federal or state law, for employees who request and receive an exemption from COVID-19 vaccination because of a disability, medical condition, or sincerely held religious belief, practice, or observance.

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

11. 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.

12. 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.

13. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

14. 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
3rd day of April,
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