Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER EIGHTY-FOUR (2022)

ACTION TO PROVIDE CERTAIN OPERATIONAL RELIEF FOR HOSPITALS AND HEALTHCARE WORKERS, VIA DECLARATION OF A LIMITED STATE OF EMERGENCY

Importance of the Issue

As the Commonwealth of Virginia continues to respond to the novel coronavirus (COVID-19) pandemic, the highly-transmissible Omicron variant is driving a significant increase in hospitalizations. This increase in people hospitalized due to COVID-19—the overwhelming majority of whom are unvaccinated—is placing stress on Virginia's general hospitals and nursing facilities and creating a sudden yet temporary need to increase bed capacity in these facilities. In addition, the winter season is spurring an increasing number of flu and respiratory syncytial virus (RSV) cases in Virginia, impacting hospital capacity. Staffing levels at these facilities are severely strained by a national shortage of healthcare workers. Healthcare workers across the country are facing severe burnout and exhaustion 22 months into the pandemic. Reinstituting both the authorization of out-of-state licensed professionals to provide care to the citizens of the Commonwealth and the availability of telehealth services will assist in meeting that demand.

Over 3,500 patients are hospitalized statewide as a result of COVID-19, with a seven-day average of 3,118 patients hospitalized as of January 9, 2022. Statewide ventilator numbers have significantly increased over last month, with 314 patients on ventilator support as of January 10, 2022 compared to 146 ventilated COVID-19 patients on December 1, 2021. ICU COVID-19 hospitalizations have more than doubled—increasing from 235 to 567 patients in the ICU—since December 1, 2021. Virginia is quickly approaching its record of 585 COVID-19 ICU patients reported on January 13, 2021.

The increase in COVID-19 continues to result in increased demand for certain health-care services that, coupled with significant burden on the health-care system, require additional flexibilities for health-care providers to ensure access to care for Medicaid and Family Access to Medical Insurance Security (FAMIS) members.

Vaccines are now approved for all persons aged five and older and booster shots are now recommended for certain persons who have previously been vaccinated, in accordance with Centers for Disease Control guidance. It is anticipated that additional vaccinators will again be necessary. It remains critical that all doses of COVID-19 immunizations administered in the Commonwealth are reported to the Virginia Immunization Information System in a manner consistent with the Virginia Immunization Information System Regulations.

The General Assembly afforded immunity from certain liability in circumstances such as those presented by the COVID-19 health crisis. Sections 8.01-225.01 and 8.01-225.02 of the *Code of Virginia* provide certain liability protection to healthcare providers during a state of emergency. Section 44-146.23 of the *Code of Virginia* provides certain liability protection to public and private agencies and their employees engaged in emergency services activities, which include medical and health services.

Directive

Therefore, on this date, January 10, 2022, I declare that a limited state of emergency exists in the Commonwealth of Virginia due to COVID-19, a communicable disease of public health threat and its impact on hospitals and the health-care workforce. The effects of COVID-19 constitute a disaster as described in § 44-146.16 of the *Code of Virginia* (*Code)*. By virtue of the authority vested in me by Article V of the Constitution of Virginia and by § 44-146.17 of the *Code*, I declare that a limited state of emergency exists in the Commonwealth of Virginia.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

1. Authorization for the Commissioner of the Virginia Department of Health, the Commissioner of the Department of Behavioral Health and Developmental Services, the Director for the Department of Medical Assistance Services and the Director of the Department of Health Professions, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state regulation, and enter into contracts as required to implement this order without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

2. Notwithstanding the provisions of Article 1.1 of Chapter 4 of Title 32.1 of the *Code*, I direct the State Health Commissioner, at his discretion, to authorize any general hospital or nursing home licensed by the Virginia Department of Health (VDH) or to increase licensed bed capacity as determined necessary by the Commissioner to respond to increased demand for beds resulting from COVID-19. Notwithstanding § 32.1-132 of the *Code*, I further direct that any beds added by a general hospital or nursing home pursuant to an authorization of the Commissioner under this Order will constitute licensed beds that do not require further approval or the issuance of a new license. Any authorization by the Commissioner to increase bed capacity, and the authority for any resulting increased number of beds, will expire 30 days after the expiration or rescission of this Order, as it may be further amended.

3. Notwithstanding any contrary provision in Title 54.1 of the *Code*, a license issued to a health-care practitioner, pharmacist, pharmacy intern, or pharmacy technician by another state, and in good standing with such state, shall be deemed to be an active license or registration issued by the Commonwealth to provide health-care or professional services as a health-care practitioner of the same type for which such license or registration is issued in another state provided the health-care practitioner is engaged by a hospital (or an affiliate of such hospital where both share the same corporate parent), licensed nursing home, dialysis facility, the VDH, or a local or district health department for the purpose of assisting that facility with public health and medical and health operations. Hospitals, licensed nursing homes, dialysis facilities, and health departments must submit to the applicable licensing authority each out-of-state health-care practitioner's name, license type, state of license, and license identification number within a reasonable time of such health-care practitioner providing services at the applicable facility in the Commonwealth.

4. Health-care practitioners with an active license issued by another state may provide continuity of care to their current patients who are Virginia residents through telehealth services. Establishment of a relationship with a new patient requires a Virginia license unless pursuant to paragraph 3 of this Order.

5. Physician assistants licensed in Virginia with two or more years of clinical experience may practice in their area of knowledge and expertise and may prescribe without a written or electronic practice agreement.

6. A health-care practitioner may use any non-public facing audio or remote communication product that is available to communicate with patients, provided that such communication product is not inconsistent with the waivers and flexibilities issued by the United States Department of Health and Human Services and the Centers for Medicare and Medicaid Services. This exercise of discretion applies to telehealth services provided for both COVID-19 and for other diagnosis and treatment services unrelated to COVID-19.

7. A licensed practical nurse may administer the COVID-19 vaccine without the supervision of a registered nurse or licensed medical practitioner.

8. Licensed health professionals of health systems or hospitals whose scope of practice includes administration of the vaccine and who have administered the COVID-19 vaccine in a health system or hospital setting may administer the COVID-19 vaccine at any point of distribution that is held in collaboration between a health system or hospital and a local health department without undergoing additional training.

9. A local health department may collaborate with a federal health facility, whether civilian or military, for the purpose of COVID-19 vaccine administration. Federal personnel whose scope of practice includes vaccination may serve with the Medical Reserve Corps after a training and skills assessment as required by VDH.

10. The Department of Medical Assistance Services (DMAS) shall suspend pre-admission screening pursuant to § 32.1-330 of the *Code*. All new nursing home admissions will be treated

as exempted hospital discharges. Community based LTSS screening teams shall be exempt from face-to-face screenings and may screen for nursing home admission from a community setting or waiver services using telehealth or telephonic screening.

11. DMAS shall waive requirements pursuant to § 32.1-325(A)(14) of the *Code* concerning certificates of medical necessity. Any supporting verifiable documentation requirements are waived with respect to replacement of durable medical equipment (DME). DMAS shall also suspend enforcement of additional replacement requirements for DME, prosthetics, orthotics, and supplies that are lost, destroyed, irreparably damaged, or otherwise rendered unusable, such that the face-to-face requirement, a new physician's order, and new medical necessity documentation are not required for replacement equipment.

12. Any health-care provider as defined in §32.1-127.1:03 of the *Code*, or any other person permitted by law to administer the COVID-19 vaccine, who administers COVID-19 immunizations, shall report to the Virginia Immunization Information System in a manner consistent with the Virginia Immunization Information System Regulations.

13. The number of technicians a pharmacist may supervise shall be increased. No pharmacist shall supervise more than five persons performing the duties of a pharmacy technician at one time. Pharmacy technicians performing COVID-19 administrative tasks will not be counted in the ratio count.

14. Emergency Medical Services (EMS) agencies shall continue to coordinate and work with health-care providers to address the overwhelming demands and capacity shortages being experienced by EMS agencies and other first responders. This includes strategies to manage and coordinate pre-hospital care as well as patient discharge and transport.

15. Temporary nurse aides practicing in long term care facilities under the federal Public Health Emergency 1135 Waiver may be deemed eligible by the Board of Nursing to take the National Nurse Aide Assessment Program examination upon submission of a completed application, the employer's written verification of competency and employment as a temporary nurse aide, and provided no other grounds exist under Virginia law to deny the application.

16. Copays required under § 32.1-351(C) of the *Code* for Virginians receiving health insurance through the Family Access to Medical Insurance Security Plan are waived.

17. Personal care, respite, and companion providers in the agency- or consumer-directed program, who are providing services to individuals over the age of 18, may work for up to 60 days, as opposed to the current 30-day limit in § 32.1-162.9:1 of the *Code*, while criminal background registries are checked. Consumer-directed Employers of Record must ensure that the attendant is adequately supervised while the criminal background registry check is processed. Agency providers must adhere to current reference check requirements and ensure that adequate training has occurred prior to the aide providing the services in the home. Agency providers shall conduct weekly supervisory visits through telehealth methods when the aide works prior to receiving criminal background registry results. This section does not apply to services provided

to individuals under the age of 18, with the exception of parents of minor children in the consumer-directed program.

18. Requirements under § 2.2-4002.1 of the *Code* related to the 30-day advance -public notice and comment period are waived as to DMAS only, so that DMAS can issue Medicaid Memos to ensure that healthcare providers receive immediate information on flexibilities to ensure access to care for Medicaid members.

19. Prior to the transfer and transport of a patient subject to a temporary detention order to a state-operated psychiatric hospital, the facility where the patient is located and the transporting law enforcement agency or alternative transportation provider are strongly encouraged to contact the state-operated psychiatric hospital of temporary detention to ensure that a bed is available for the patient. If the state-operated psychiatric hospital system is at or over total bed capacity, the facility where the patient is located and the transporting law enforcement agency or alternative transportation provider are encouraged to work with the state-operated psychiatric hospital to delay transportation of the patient until the state-operated psychiatric hospital can provide a bed.

20. Prior to releasing a patient under a temporary detention order for transport to a state-operated psychiatric hospital, providers participating in the State Medicaid Plan must comply with the applicable *Criteria for Medical Assessment Prior to Admission to a Psychiatric Hospital, Inpatient Psychiatric or Crisis Stabilization Unit* found at http://www.dbhds.virginia.gov/assets/doc/about/masg/adults-medical-and-screening-guidelines-11-5-2018.pdf and http://www.dbhds.virginia.gov/assets/doc/about/masg/peds-medical-assessment-and-screening-guidelines-11-5-2018.pdf. Such providers shall screen patients under emergency custody or temporary detention for COVID-19 in accordance with guidance issued by the Centers for Disease Control and Prevention and the Virginia Department of Health. In addition, with consent of the patient subject to emergency custody or temporary detention, such providers should administer a COVID-19 active infection test prior to the transfer of the patient to a state-operated psychiatric hospital. If no other payment source is available, the Department of Behavioral Health and Developmental Services will reimburse the provider for the cost of the test.

Effective Date of this Executive Order

This Executive Order shall be effective January 10, 2022, and shall remain in full force and in effect until February 11, 2022, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 10th day of January, 2022.

Ralph S. Northam, Governor

Attest:

Kelly Thomasson, Secretary of the Commonwealth