STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

KODY H. KINSLEY
SECRETARY

March 10, 2022

The Honorable Tim Moore
NC House Speaker
16 West Jones Street
Raleigh, NC 27601

Dear Speaker Moore:

The State of Emergency provides practical and necessary tools as we manage COVID-19. Below I've outlined the public health perspective of how it enables the Department and our partners – hospitals, long term care facilities, vaccine providers, schools, and others – to protect the health and safety of North Carolinians. Alternatively, there are legislative actions that could enable the Department to continue to adequately manage COVID-19 without a State of Emergency.

On March 10, 2020, Governor Cooper issued Executive Order No. 116, which declared a State of Emergency. Throughout the pandemic there have been several Executive Orders, that are linked to the declared State of Emergency, tailored to the regulatory and flexibility needs of NCDHHS and each phase of the pandemic response. Currently, these provisions are contained in Executive Order No. 245. The DHHS-specific executive orders required concurrence of the Council of State each time the orders were renewed.

All provisions of these executive orders have been carefully reviewed over time to determine what measures needed to be carried forward. Now, there are several provisions that remain in effect and continue to be critical in our evolving COVID-19 response related to (1) the authority of the State Health Director to issue standing orders for COVID-19 vaccinations, treatment and testing, and (2) flexibility in the licensure and regulation of hospitals, nursing homes, other health care facilities, and EMS agencies, and related personnel to ensure these entities can quickly scale up services, resources, and staff. Impact and proposed legislative mitigations are detailed below.

## Legislation Needed for Mitigation

I. Standing Orders for Testing, Vaccination and Treatment

*Impact:* The state health director standing order allows for statewide implementation of vaccine administration, testing and multiple therapeutics in settings where a prescribing provider may not be regularly onsite or comfortable issuing a similar order, especially in rural and underserved areas. While some settings may be able to transition away from reliance on the State Health Director's Standing Orders to a local provider standing

order, many will not. NC DHHS would still have to facilitate the implementation of local standing orders by providing education, guidance, and continuing to update template standing orders with the rapidly changing environment for local providers to adopt.

Those that are unable to transition away from reliance on the State Health Director's standing orders include entities such as schools that do not have clinical staff or local health departments, predominantly in more rural areas of the state, who are unable to identify a medical provider able or willing to issue such an order. For those entities, testing and vaccination will be limited to the patients a provider could see or eliminate it all together if there is not a provider at the site. Statewide standing orders also allow for insurance billing in settings where it may not be possible without a provider order. Further, some smaller community vendor sites may be limited in ability to identify medical providers to execute the orders which would limit people's ability to access testing or vaccines for COVID-19. As additional authorizations are applied to current therapeutics, without a statewide standing order for medications like monoclonal antibodies, we will not be able to take advantage of the full network of providers including pharmacies.

The Executive Order, and tied to the State of Emergency, provides liability protection for the State Health Director, similar to existing legislation authorizing standing orders in other contexts, as well as for anyone that is acting pursuant to and in accordance with the Standing Orders. This liability protection will no longer be in effect for COVID-19 standing orders once the State of Emergency is rescinded. Without liability protection for the State Health Director, or those that rely on her Standing Orders, she would be potentially exposed to personal liability as her personal medical license is the basis for issuing these orders.

*Proposed Legislation:* Give the State Health Director explicit authority to issue a statewide Standing Order for the administration, dispensation or delivery of a FDA authorized or approved diagnostic tests, vaccines, treatments, medications or other medical procedure or intervention needed in his or her medical judgment for the protection and promotion of the public health or the control of communicable diseases and provide immunity from any civil or criminal liability for actions authorized to (1) The State Health Director acting pursuant to this section; and (2) Any authorized individual who acts in accordance with and pursuant to a statewide standing order issued under the legislation.

II. Healthcare Licensure and Regulation

*Impact:* Through Executive Orders No. 130 and 139, flexibility was given in the licensure and regulation of hospitals, nursing homes, other health care facilities, and EMS agencies, and related personnel, to ensure these entities can scale up services, resources and staff to respond to the COVID-19 pandemic. Currently, flexibility allows for things like: physicians whose privileges have expired, as well as new physicians, to practice prior to final review and approval by a hospital governing body, physician assistants and nurse practitioners to admit patients to hospitals, nursing homes to utilize temporary nurse aides for an extended period prior to obtaining certification, ambulances to be staffed with a minimum of 1 EMT and a driver rather than an EMT and another EMS credentialed individual, and out of state licensed workers and retired health care professionals to practice in North Carolina. Additionally, these flexibilities have permitted an expansion of telehealth services and flexibility for in-home care. The consequence of not maintaining this state flexibility would result in staffing and operational challenges for health care facilities and EMS agencies in North Carolina.

In addition to the waiver of numerous State regulations applicable to health care facilities that are not CMS certified, these flexibilities include waiver of about ninety (90) state regulations to ensure consistency with the CMS waivers (see: https://www.cms.gov/files/document/covid-19-emergency-declaration-waivers.pdf). Without this flexibility through the declared state of emergency, CMS certified health care facilities will no longer be able to avail themselves of the waivers issued by CMS. In addition, hospitals may no longer be able to participate in the CMS Acute Care at Home Program. The Division of Health Service Regulation's (DHSR)

enforcement of conflicting State and federal regulatory authority would likely require DHSR to find healthcare facilities out of compliance with State regulations and subject to the imposition of penalties although the facility remains in compliance with waivers issued by CMS. In short, the loss of these flexibilities will impact facilities ability to provide care to residents and patients.

*Proposed Legislation:* The proposed legislation is intended to give DHSR authority to waive state administrative rules of the NC Medical Care Commission in the event of a declared emergency (state or federal) or in circumstances when an emergency occurs that poses a risk to the health and safety of patients. This will also help the state be prepared to respond to future public health emergencies or emergency situations in general.

The areas where authority to waive rules will be included in the proposed legislation are as follows:

- Mental health facilities licensed under Chapter 122C;
- Residential facilities licensed under Chapter 131D (adult care homes);
- Other licensed health care facilities under Chapter 131E (hospitals, nursing homes, home care, hospices – inpatient and residential);
- Rules pertaining to Emergency Medical Services (EMS), i; and
- Rules pertaining to the Nurse Aide Registry.

III. Asbestos Management and Lead Abatement and Renovation Professionals

*Background:* Under Executive Order No. 139, Section 1(A), as continued by subsequent executive orders and exercised by the Secretary, the enforcement of expiration dates of asbestos accreditations, lead abatement certifications, dust sampling technician certifications, and recertifications were waived to ensure there were sufficient professionals credentialed to perform asbestos management and lead abatement and renovation work in the State. To maintain these accreditations and certifications, professionals are required to complete in-person refresher training courses and, due to COVID-19 restrictions, there have been fewer training opportunities. The flexibility granted by Executive Order allowed accreditations and certifications otherwise set to expire during the State of Emergency to be extended until sixty (60) days following the end of the State of Emergency. However, as the number of individuals who will need a refresher training following this waiver exceeds routine demand and availability of courses, additional time is needed to meet these refresher training requirements.

*Impact:* If this flexibility were to expire without allowing sufficient time for these professionals to complete refresher training courses, it could create a shortage in these workforces across the State. As of December 2021, 1,807 of approximately 3,600 total accredited asbestos management professionals, 152 of approximately 400 total certified lead abatement professionals, and 1,159 of approximately 2,400 total certified lead renovation, repair, and painting professionals needed refresher trainings in one or more disciplines. Professionals whose accreditations or certifications expire due to failure to meet refresher training requirements must complete the entire accreditation or certification process again at additional time and cost to the professional, which could lead to a reduction in the workforce. A reduction in this workforce could negatively impact a new program established by S.L. 2021-180, Sec. 9G.8.(a), under which $150 million was appropriated for the inspection, testing, remediation, and abatement of asbestos, lead based paint, and lead in water hazards in the State's public schools and licensed child care facilities. This program will involve a high volume of specialized work that can only be completed by accredited and certified professionals. The program is expected to begin in 2022 and the appropriated funds must be obligated by the end of 2024.

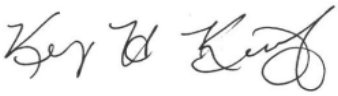
*Proposed Legislation:* This proposed legislation is intended to allow additional time for asbestos management, lead abatement, and lead renovation professionals to come back into compliance with refresher training requirements. We have drafted a proposal that would allow professionals whose asbestos accreditations under

10A N.C. Admin. Code 41C .0602(e), lead abatement certifications under 10A N.C. Admin. Code 41C .0802(e), dust sampling technician certifications under 10A N.C. Admin. Code 41C .0902(c)(3)-(4), or recertification requirements under 10A N.C. Admin. Code 41C .0902(d) will expire due to lack of a refresher training course to have a total of 180 days (6 months) from the end of the State of Emergency to come into compliance.

I appreciate your willingness to consider the above proposals and look forward to our continued partnership to ensure that the health, safety and well-being of North Carolinians remains at the forefront.

With the deepest gratitude for your public service and partnership, I remain

Most respectfully yours,



Kody H. Kinsley
Secretary

cc: Members of the NC General Assembly