



State of North Carolina

ROY COOPER
GOVERNOR

September 24, 2021

EXECUTIVE ORDER NO. 234

PROVIDING FLEXIBILITY IN CERTAIN HEALTH ASSESSMENTS AND IMMUNIZATION REQUIREMENTS DUE TO IMPACTS OF THE PANDEMIC

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-177, 180-181, 183-185, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, 228-232; and

WHEREAS, more than one million three hundred and sixty-eight thousand (1,368,000) people in North Carolina have had COVID-19, and over sixteen thousand (16,000) people in North Carolina have died from the disease; and

WHEREAS, all 100 North Carolina counties are classified as high transmission areas by the Centers for Disease Control and Prevention ("CDC"); and

WHEREAS, the growing dominance and increased transmissibility of the Delta variant of COVID-19 has led to a significant increase in the number of COVID-19 cases and hospitalizations, particularly among those who are unvaccinated; and

WHEREAS, only fifty-three percent (53%) of North Carolinians are fully vaccinated against COVID-19; and

WHEREAS, safe and effective COVID-19 vaccines help protect people from severe illness, hospitalization and death and slow the spread of viral transmission and higher rates of

COVID-19 vaccination in a community are associated with reduced hospitalizations and deaths; and

WHEREAS, no COVID-19 vaccine has been approved for children age eleven (11) and younger, and unvaccinated persons of any age are at greater risk that they will contract the virus if exposed, particularly if they are in settings where they cannot socially distance and if they do not wear face coverings; and

WHEREAS, children age eleven (11) and younger are relying on those who are eligible to get vaccinated to help protect those who cannot; and

WHEREAS, taking strong steps to keep children safely in classrooms where they learn best is in the best interest of children; and

WHEREAS, immunizations are an integral part of the state's public health strategy and N.C. Gen. Stat. §§ 130A-152 to 130A-157 require routine immunizations of children and students in accordance with rules adopted by the Commission for Public Health (the "Commission"); and

WHEREAS, specifically, N.C. Gen. Stat. § 130A-155(a) requires a certificate of immunization indicating that the child has received the required immunizations to be presented to the school within thirty (30) calendar days from the child's first date of attendance; and

WHEREAS, N.C. Gen. Stat. § 130A-155(c) requires each school to file an annual immunization report with the North Carolina Department of Health and Human Services ("NCDHHS") by November 1 of each school year; and

WHEREAS, N.C. Gen. Stat. § 130A-440(a) requires every child attending kindergarten in public schools, or those children attending a higher grade in the public schools for the first time, to present proof of a health assessment; and

WHEREAS, the health assessment includes a medical history and physical examination for the child, among other health screenings, that must be completed by a qualifying medical professional specified by statute; and

WHEREAS, this health assessment, pursuant to N.C. Gen. Stat. §§ 130A-440(a) and 130A-441(a)(6), instructs the health care provider to provide the student's current immunization record; and

WHEREAS, N.C. Gen. Stat. § 130A-441(c) requires the principal to file a health assessment status report to NCDHHS within sixty (60) calendar days after the commencement of a new school year; and

WHEREAS, the emergency conditions of the COVID-19 pandemic have made it difficult for many families to get all required immunizations and obtain the required health assessment on a timely basis, and action is necessary to support these families, while also supporting the public health goal of ensuring that children are appropriately immunized from harmful and contagious diseases and assessed for health conditions; and

WHEREAS, the undersigned has previously extended required deadlines to complete the required immunizations and health assessments under Executive Orders Nos. 156 and 172, due to the emergency conditions created by the pandemic; and

Barriers to Obtaining Required Immunizations and Health Assessment

WHEREAS, the Delta variant is much more transmissible than prior variants, including in children, rates of cases in pediatric populations are highest among all age groups for the first time in the pandemic, with cases among children making up almost a third of the state's new COVID-19 cases as of September 18th, and the number of hospitalizations for COVID-19 have increased in this population; and

WHEREAS, research published in the Morbidity and Mortality Weekly Report shows that “weekly COVID-19 associated hospitalization rates among children and adolescents rose nearly five-fold during late June-mid August 2021, coinciding with increased circulation of the highly transmissible SARS-CoV-2 Delta variant”; and

WHEREAS, pediatricians and providers across the state are experiencing significant disruption due to the high rate of spread of the Delta variant of SARS-CoV2 in their communities and have reported that their time and resources have been diverted caring for children sick with COVID-19 and other viral illness and that they have been experiencing staff shortages and shortages of required vaccines, and pediatricians and providers accordingly face barriers in scheduling appointments for immunization administration and health assessments; and

WHEREAS, the North Carolina Pediatric Society has expressed concern to NCDHHS that many pediatricians are unable to schedule the needed appointments to administer the necessary immunizations and health screenings required by the health assessment on a timely basis to students; and

WHEREAS, school leaders across the state have indicated that many children are currently excluded, or will soon be excluded, from school because of their inability to obtain the required immunizations and health assessment by the deadline; and

WHEREAS, to ensure that students are not excluded from school and do not miss out on the academic, social, and other benefits of in-person learning, it is reasonable and necessary to provide flexibility to families and to schools to comply with their respective obligations to obtain the required immunizations and health assessments and to report the status of those immunization and health assessment reports to NCDHHS; and

WHEREAS, accordingly, this Executive Order provides temporary flexibility to families to provide proof that they have scheduled an appointment for the required immunizations and health assessments, in lieu of obtaining the required immunizations and health assessment, to comply with the above-referenced statutory obligations; and

WHEREAS, proof of a scheduled appointment is evidence of a family’s commitment to obtaining the required immunizations and health assessment for their child, but for the barriers to scheduling the appointment created by the ongoing COVID-19 pandemic; and

WHEREAS, the State Health Director may suspend temporarily immunization requirements due to emergency conditions, pursuant to 10A N.C. Admin. Code 41A .0401(c); and

WHEREAS, therefore, in a written memorandum dated September 24, 2021, (the “Immunization Extension and Flexibility Memo”), the State Health Director has temporarily suspended, until October 31, 2021, the immunization requirements of 10A N.C. Admin. Code 41A .0401(a) and (b), permitted proof of a scheduled appointment to obtain the required immunizations, in lieu of obtaining the required immunizations, to constitute a student’s compliance with the above-referenced rules; and

WHEREAS, the effect of the Immunization Extension and Flexibility Memo will be to provide families additional time to obtain the immunizations required for students under the Commission’s rules or to demonstrate proof that they have an upcoming appointment scheduled to obtain those immunizations, and to ensure that children are not excluded from school for in-person learning in the interim; and

WHEREAS, since the time to obtain these immunizations has been extended, the deadlines should also be extended for reporting on immunizations and for completing and reporting on health assessments, which pursuant to N.C. Gen. Stat. § 130A-441(a)(6) includes instructions to health care providers to supply immunization records; and

WHEREAS, notwithstanding the Immunization Extension and Flexibility Memo, families are strongly encouraged, should their unique circumstances permit, to obtain the required immunizations and health assessment for their children as soon as possible; and

WHEREAS, for the avoidance of doubt, this Executive Order does not waive the requirements to obtain the required immunizations and health assessment; and

Statutory Authority and Determinations

WHEREAS, pursuant to N.C. Gen. Stat. § 147-12, the undersigned may supervise the official conduct of all executive and ministerial officers; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.12(3)(c), (f), and (g), the Division of Emergency Management has the power and duty to revise, in coordination with the State Health Director, the immunization procedures, the procurement and allocation of immunizing agents, and the guidelines for prophylaxis and treatment of exposed and affected persons in the North Carolina Emergency Operations Plan; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to “give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article”; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact, thus needed control cannot be imposed locally; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives

and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments, and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict other activities or conditions, the control of which may be reasonably necessary to maintain order and protect lives or property during a state of emergency;

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Required Immunizations and Immunization Certificates.

For the reasons and pursuant to the statutes listed above:

- a. "Proof of appointment" as used herein shall be as defined in the Immunization Extension and Flexibility Memo. To advance the goal of reducing the number of children in North Carolina excluded from in-person learning and to ensure equity in who has access to in-person learning across the state, the undersigned encourages a broad interpretation of what constitutes acceptable proof under that definition.
- b. NCDHHS shall provide additional time for families, students, and children to complete required immunizations by implementing the Immunization Extension and Flexibility Memo from the State Health Director. Specifically, NCDHHS shall allow proof of an appointment to obtain the required immunizations, in lieu of obtaining the immunizations, to qualify as the child's requirement to obtain the required immunizations in compliance with 10A N.C. Admin. Code 41A .0401(a) and (b) as set out in the Immunization Extension and Flexibility Memo.
- c. To cope with the emergency, and to create immunization reports that will be most beneficial to maintaining public health, NCDHHS is directed to align deadlines with the Immunization Extension and Flexibility Memo. This will include, without limitation, the following:
 1. The time period from August 1, 2021 through October 31, 2021, inclusive, will not count towards the thirty (30) calendar day grace period for submission of a certificate of immunization under N.C. Gen. Stat. § 130A-155(a) when proof of appointment is provided. The requirement to submit a certificate of immunization will be reinstated on November 1, 2021, with a grace period until November 30, 2021 or thirty (30) calendar days from the child's first day of attendance, whichever is later.
 2. Schools will have until January 15, 2022, to submit immunization reports to NCDHHS under N.C. Gen. Stat. § 130A-155(c).
 3. The time period from August 1, 2021 through October 31, 2021, inclusive, will not count towards the thirty (30) calendar day period for submission of a health assessment transmittal form under N.C. Gen. Stat. § 130A-440(a) when proof of appointment is provided. The requirement to submit a school health assessment will be reinstated on November 1, 2021 with a grace period until November 30, 2021

2021 or 30 calendar days from the child's first day of attendance, whichever is later.

4. Principals will have until January 15, 2022, to submit health assessment status reports to NCDHHS under N.C. Gen. Stat. § 130A-441(c).

The undersigned directs that there will be no penalties for submissions that are made in accordance with the extensions of time listed above.

- d. The Division of Emergency Management shall make any necessary temporary revisions to the Emergency Operations Plan to reflect this temporary change in immunization procedures. These revisions may include, without limitation, (1) the need to extend the time to submit the immunization reports due to the pandemic, and (2) the resulting need to extend the time to submit any report (such as the health assessment) that instructs providers to provide those immunization reports.

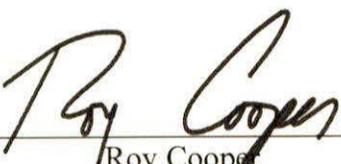
Section 2. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 3. Effective Date.

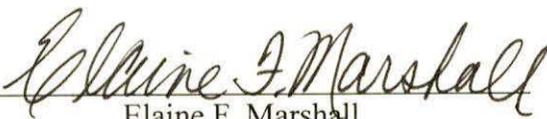
This Executive Order is effective immediately. This Executive Order shall remain in effect through January 15, 2022, unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 24th day of September in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

