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State of Rhode Island

Daniel J. McKee
Governor

EXECUTIVE ORDER

22-07

January 21, 2022

PRESERVING THE AVAILABILITY OF RESIDENT CARE IN STATE NURSING FACILITIES

WHEREAS, on March 9, 2020, Executive Order 20-02 was issued for a declaration of a state of emergency due to the dangers to health and life posed by SARS-CoV-2 ("COVID-19") and that Order has been extended through at least February 17, 2022;

WHEREAS, on November 12, 2021, I issued Executive Order 21-109 affirming the disaster emergency that was first declared on August 19, 2021 for the Delta variant of SARS-CoV-2 ("the Delta variant") and other then-existing COVID-19 variants and that Order has been extended through at least February 4, 2022;

WHEREAS, Rhode Island is experiencing a high level of community transmission of COVID-19, defined as more than 100 cases of COVID-19 per 100,000 people in the past 7 days;

WHEREAS, prior to the COVID-19 pandemic, Rhode Island's hospitals and healthcare facilities faced major staffing challenges and significant financial instability;

WHEREAS, the pandemic has exacerbated these issues, leading to bed shortages at the State's acute care facilities, including a shortage of available beds in nursing facilities needed for safe discharge of lower acuity patients to an appropriate and necessary level of care;

WHEREAS, in recent months, there has been an influx of patients who deferred necessary care during the height of the pandemic and now require longer hospitalization;

WHEREAS, Rhode Island's licensed healthcare facilities are experiencing workforce shortages due to pandemic stress, burnout, and widespread resignations;

WHEREAS, in recent weeks, the number of Rhode Islanders hospitalized with COVID-19 has dramatically increased;

WHEREAS, the Rhode Island Department of Health (RIDOH) projects the already high COVID-19 community transmission and hospitalizations in the State will continue to increase over the coming weeks and into early 2022;

WHEREAS, on November 26, 2021, the World Health Organization (WHO) named and classified the Omicron variant of SARS-CoV-2 (the "Omicron variant") as a Variant of Concern; and on November 30, 2021, the United States designated the Omicron variant as a Variant of Concern. The Omicron variant is now the dominant variant in Rhode Island and neighboring states; it is expected to cause a significant number of COVID-19 infections in Rhode Island and to increase COVID-19 transmission rates;

WHEREAS, Rhode Island and other states have experienced early influenza season outbreaks with a strain of influenza that is transmitted in a similar manner as SARS-CoV-2, and the current strain of influenza A H3N2 is known to be associated with more hospitalizations and deaths than other influenza viruses in persons aged 65 years and older;

WHEREAS, the significant increase in SARS-CoV-2 cases due to the Delta variant, exacerbated by the increase in influenza A H3N2 and potentially by the emergence of the Omicron variant, together with staffing shortages in healthcare institutions in the State, constitute a serious threat to public health in Rhode Island;

WHEREAS, in May of 2021, the *Nursing Home Staffing and Quality Care Act* was signed into law and codified as Rhode Island General Laws §§ 23-17.5-32 through 23-

17.5-36 (“Minimum Staffing Law”) implementing minimum staffing requirements in licensed nursing facilities during times of normal demand for resident beds and availability of workforce resources;

WHEREAS, on November 17, 2021 a Rhode Island Health Care Association/ Leading Age survey of 77 nursing homes reported: 1,920 open staff positions in Rhode Island nursing facilities, including 983 openings for nursing assistants and 447 RN/LPN openings; 28 facilities have closed units during the pandemic due to lack of staff; 23 facilities have closed to new admissions and 71% of all facilities have limited admissions during the three months prior to the survey;

WHEREAS, starting January 1, 2022, the Minimum Staffing Law imposes significant penalties for nursing facilities that do not maintain the mandated hours per resident day of care by direct caregivers;

WHEREAS, in the current environment of critical staffing shortages, the only means by which nursing facilities can maintain the staff to resident ratio necessary to meet the required minimum hours of direct care to residents is to reduce the number of residents residing in the facility, which results in important healthcare resources being taken offline from the continuum of care needed to protect the health, safety, and welfare of the citizens of the State of Rhode Island; and

WHEREAS, these critical staff shortages justify a moratorium on enforcement of the minimum staffing requirements and related financial penalties set forth in the Minimum Staffing Law as such requirements imposed during this crisis will only serve to reduce the State’s health care capacity.

NOW, THEREFORE, I, DANIEL J. MCKEE, by virtue of the authority vested in me as Governor of the State of Rhode Island, pursuant to Article IX of the Rhode Island Constitution and the Rhode Island General Laws, including, but not limited to, Title 30, Chapter 15, and Title 23, Chapter 8, do hereby order and direct the following:

1. The statutory and regulatory 24-hour registered nurse on-premises requirements contained in Rhode Island General Laws § 23-17.5-32(a) and 216-RICR-40-10-1.16.6.C are hereby suspended. They shall be replaced by requiring a registered nurse on the premises of each facility no less than sixteen (16) hours a day. During those hours that a registered nurse is not on the premises of the facility, a licensed

practical nurse shall be on the premises with remote access to a designated on-call registered nurse.

2. The following provisions of the Rhode Island General Laws are hereby suspended:

- a. §§ 23-17.5-32(c)(i), (d), and (e);
- b. § 23-17.5-33;
- c. § 23-17.5-34(d); and
- d. § 23-17.5-34(j).

3. Any regulations scheduled to be promulgated by RIDOH for the enforcement of the provisions set forth in paragraph 2 above are hereby suspended.

This Order shall take effect immediately and remain in full force and effect through February 14, 2022 unless renewed, modified, or terminated by a subsequent Executive Order.

So Ordered,



Daniel J. McKee
Governor