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State of Rhode Island

Daniel J. McKee
Governor

EXECUTIVE ORDER

21-120

December 22, 2021

INCREASING HOSPITAL CAPACITY AND FLEXIBILITY FOR PATIENT CARE

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 COVID-19, and that Order has been extended through at least December 23, 2021;

WHEREAS, on September 2, 2020, Executive Order 20-70 was issued to suspend various statutes and rules to allow expanded hospital capacity, and to direct hospitals and community-based providers during shortages of medical/surgical and critical care capacity to provide for the safety and quality of care of everyone who presented at a hospital or a community-based provider for care throughout the progression of the COVID-19 virus;

WHEREAS, on November 12, 2021, Executive Order 21-109 was issued for a declaration of a state of emergency due to the increased dangers to health and life posed by SARS-CoV-2, the Delta variant, which was then the dominant strain in Rhode Island and nationally;

WHEREAS, a new COVID-19 variant known as Omicron has appeared in the United States and, according to national and international authorities, is dangerously contagious and is expected to intensify the transmission of COVID-19;

WHEREAS, even before 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 and hospital diversions at the State's acute care facilities and an even more emergent workforce shortage due to pandemic stress, burnout, and widespread resignations. As one example, the number of employee vacancies at Lifespan was 1,000 in February of 2020; today that number is more than 2,400. Other healthcare facilities – both in Rhode Island and across the country – are facing similar staffing problems. Without adequate staff, some hospitals have closed facilities and curtailed services;

WHEREAS, because of the recent surge in COVID-19 cases, and the lack of available medical staff, many Rhode Island hospitals are experiencing high ICU occupancy levels, and, when compared to the first wave of COVID-19 in Rhode Island in 2020, have fewer staffed ICU beds than were available at that time, declining from 320 staffed ICU beds in May 2020 to 126 staffed ICU beds on December 3, 2021;

WHEREAS, Rhode Island hospitals are experiencing a shortage of medical staff and increased difficulty in recruiting new staff due to a nationwide and statewide crisis of available healthcare workers who are needed to safely and effectively provide care for existing and new COVID-19 Delta and Omicron variant cases, as well as for patients seeking routine inpatient and outpatient care;

WHEREAS, some Rhode Island hospitals have experienced a vacancy of up to 25% of nursing positions, despite active recruitment for full-time and travel nurses. There have been significant vacancies in inpatient nurses, patient care technicians, and patient observers. These vacancies have resulted in the intermittent closure of beds or units that hospitals would typically keep open for patient care;

WHEREAS, Rhode Island hospitals are experiencing reduced inpatient capacity for admissions due to the closure of inpatient beds and units caused by health care provider staffing shortages and increased length of stay of existing patients due to lack of availability of beds in sub-acute facilities and/or home-based medical support services;

WHEREAS, nursing home and rehabilitation staffing shortages and COVID-19 outbreaks have impacted the ability for post-acute providers to accept discharged patients from Rhode Island hospitals;

WHEREAS, most skilled nursing facilities have closed, or have staggered bed closures, for new admissions due to an increased number of COVID-19 outbreaks among staff and residents;

WHEREAS, due to shortages of nurses and rehabilitation therapists, several home nursing care providers are limited or unable to provide timely home-based skilled services such as nursing care, physical therapy, respiratory therapy, and occupational therapy services impeding or delaying patients' safe discharges from Rhode Island hospitals;

WHEREAS, the leaders of the Rhode Island's hospitals and healthcare professionals' organizations report that concerns about personal, professional and institutional liability are significant causes of staff attrition, hinder staff recruitment, constrain medical professional judgment and limit the hospitals' flexibility to adjust medical staff to patient ratios and to deploy resources necessary to provide patient care. Such concerns in this environment place an undue burden upon health care providers that inhibits their ability to continue serving the needs of the citizens of the State;

WHEREAS, while healthcare providers are always held to a legal standard that requires them to do what reasonable providers would do; those circumstances are now determined by factors which are unique in the public health history of the State. Any standard of care applied to assess the liability of providers offering healthcare during the current emergency must consider the fact that there are an inadequate number of physicians, nurses and other healthcare workers available given the number of cases; many providers work substantially more hours than good practice would suggest under normal circumstances; many essential clinical services for patients not infected with COVID-19 have been limited, postponed or discontinued because of the urgent requirements of patients with COVID-19; treatment has been delayed because of strains on the systems in place for transferring patients from one facility to another; some supplies are unavailable in amounts necessary to provide adequate treatment under normal circumstances; many providers must provide care within the scope of practice of their licensure but beyond their hospital credentialing and/or privileges; monoclonal antibodies are available for vital treatment, but cannot be effectively deployed and widely administered due to staffing shortages; earlier than recommended discharge of patients may be required because of the desperate need for inpatient facilities. These are among a host of modifications of normal medical practice necessitated by the pandemic; and

WHEREAS, these special circumstances must be considered when determining whether an individual or institutional provider has met the standard of care expected of that provider during this pandemic.

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, do hereby issue the following Executive Order:

1. All Rhode Island licensed hospitals must continue to take whatever steps are necessary, including expanding medical/surgical and critical care capacity, to continue to evaluate and treat, to the best of that hospital's ability under the circumstances, everyone who presents at the hospital for care during the progression of the COVID-19 virus.
2. If, due to capacity, a hospital considers itself unable to provide inpatient care for patients at a level of quality available at other Rhode Island hospitals, the hospital may consult with the nearest hospital location or other appropriate care setting with the capacity to provide care at the community standard at the time, to discuss transfer, subject to patient choice. I order hospitals and all other licensed health care facilities to cooperate with one another to transfer and accept patients to increase patient access to care and maximize the quality of care delivered in this State during the period of time this Order remains in effect.
3. When medically appropriate, obstetrical, rehabilitation and behavioral health patients should be transferred by general hospitals to a suitable specialty hospital to the extent staffing and space allows at the receiving hospitals.
4. Hospitals that offer medical, surgical, and other specialty services, including Women & Infants, Bradley, Butler, Eleanor Slater, the Rehabilitation Hospital of Rhode Island, and other hospital-based rehabilitation units, should, to the extent staffing and space allow at these hospitals, accept transfers of patients, in their respective specialty service areas, from any other licensed Rhode Island hospital to support the expansion of medical/surgical and critical care capacity.
5. Community-based health care providers are ordered to continue to evaluate, treat and refer, to the best of their ability, everyone who presents to them for care throughout the progression of the COVID-19 virus, unless specifically directed otherwise by the Rhode Island Department of health.

6. A licensed hospital and the health care workers and providers performing services under its auspices, as well as any licensed facility, health care workers, and providers engaged in the delivery of monoclonal antibody treatment, acting in good faith, are not liable for civil damages arising out of the level or manner of care received by a patient during the pendency of this Order if such care has been affected by shortages in staffing and/or supplies. This provision applies only to the level or manner of care affected by any one or more of the following conditions:
 - a. Insufficient availability of trained staff;
 - b. Delivery of care by health care workers that exceeds the scope of their credentials or privileges granted by the licensed facility at which they deliver services or exceeds the scope of the services that they normally provide, provided that the care is included in the scope of their licensure. This includes the delivery of care by health care workers engaged in the administration of monoclonal antibodies;
 - c. Implementation or execution of triage protocols or scarce resource allocation policies necessitated by the state of emergency;
 - d. Use of supplies and equipment in ways that are different from the way that these supplies and equipment are normally utilized;
 - e. Treatment decisions based on compliance with federal, state, or local directives restricting the provision of certain nonessential or elective health care services; and
 - f. Insufficient availability of personal protective equipment, ventilators, medications, blood products, supplies, equipment, tests and testing supplies, or hospital beds.
7. The state licensing agency will consider the totality of circumstances in light of the above when imposing any administrative sanction or penalty, including a compliance order, upon a licensed hospital or health care provider based upon an act or omission affected by the conditions set forth in paragraph 6 above.
8. Nothing in this Order provides immunity for:
 - a. Negligence of any person or organization not described in paragraph 6 above; or
 - b. Willful misconduct, gross negligence, or bad faith.

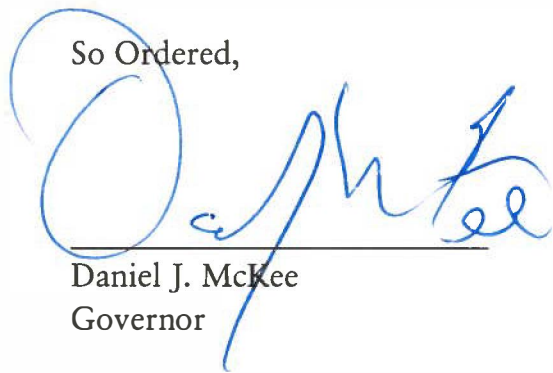
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This Order shall take effect immediately and remain in full force and effect through January 18, 2022, unless renewed, modified, or terminated by a subsequent Executive Order.

So Ordered,

A handwritten signature in blue ink, appearing to read "D. McKee", is written over a horizontal line. The signature is stylized and cursive.

Daniel J. McKee
Governor