

STATE OF NEW MEXICO

OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE
Russell Toal



DEPUTY SUPERINTENDENT
Robert E. Doucette, Jr.

BULLETIN 2020-007

March 26, 2020

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OFFICE OF
SUPERINTENDENT
OF INSURANCE

TO: ALL DOMESTIC INSURERS, ALL NON-DOMESTIC INSURERS WITH OFFICES IN NEW MEXICO, AND ALL PRODUCERS WITH OFFICES IN NEW MEXICO

RE: MARCH 23, 2020 New Mexico Department of Health Public Health Emergency Order Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

On March 11, 2020, New Mexico Governor Michelle Lujan-Grisham declared a public health emergency in the state of New Mexico because of the spread of the novel Coronavirus Disease (“COVID-19”). On March 23, 2020, New Mexico Department of Health Cabinet Secretary Kathyleen Kunkle issued a public health emergency order (“DOH Emergency Order”) which, among other things, served to close all businesses and non-profit entities except for those deemed essential.

The DOH Emergency Order defines “Essential business” as any business or non-profit entity falling within one or more of the 22 listed categories. In relevant part, category “p” includes insurance providers and category “q” includes title companies and related services. Accordingly, all insurance companies, underwriters, agents, brokers and producers with offices in New Mexico are deemed essential businesses for purposes of the DOH Emergency Order. We are pleased by the Governor’s recognition of the key role of the insurance industry.

Pursuant to the DOH Emergency Order, essential businesses may remain open *provided* they minimize their operations and staff to the greatest extent possible. Further, all essential businesses shall, to the greatest extent possible:

- adhere to social distancing protocol and maintain at least six-foot social distancing from other individuals (including other employees);
- avoid person-to-person contact wherever possible;
- query those coming into an office, whether employees, contractors or members of the public, as to whether they have travelled to areas with high COVID-19 penetration, been exposed to anyone being tested or diagnosed with COVID-19, or

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
CABINET SECRETARY KATHYLEEN M. KUNKEL**

MARCH 23, 2020

**Public Health Emergency Order Closing All Businesses and Non-Profit
Entities Except for those Deemed Essential and
Providing Additional Restrictions on Mass Gatherings Due to COVID-19**

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, COVID-19 infections in the United States have increased from 1,000 confirmed cases to over 30,000 confirmed cases;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering; and

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act as invoked through

OFFICE OF THE SECRETARY

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Executive Order 2020-004, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Condition of public health importance” means an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community.

(2) “Disease” means an illness, including those caused by infectious agents or their toxic products which may be transmitted to a susceptible host.

(3) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

- a. Health care operations including hospitals, walk-in-care health facilities, emergency veterinary and livestock services, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, and medical supplies and equipment manufacturers and providers;
- b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;
- c. Childcare facilities necessary to provide services to those workers employed by essential businesses and essential non-profit entities;
- d. Grocery stores, all food and beverage stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;
- e. Farms, ranches, and other food cultivation, processing, or packaging operations;

- f. All facilities used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;
- g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;
- h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;
- i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, custodial services, plumbers, electricians, and other skilled trades;
- j. Media services including television, radio, and newspaper operations;
- k. Gas stations, automobile repair facilities, and retailers who generate the majority of their revenue from the sale of automobile repair products;
- l. Hardware stores;
- m. Laundromats and dry cleaner services;
- n. Utilities, including their contractors and suppliers, engaged in power generation, fuel supply and transmission, water and wastewater supply;
- o. Funeral homes, crematoriums and cemeteries;
- p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;
- q. Real estate services including brokers, title companies, and related services.
- r. Businesses providing mailing and shipping services, including post office boxes;

- s. Laboratories and defense and national security-related operations supporting the United States government or a contractor to the United States government;
- t. Restaurants, but only for delivery or carry out and local breweries or distillers but only for carry out;
- u. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and
- v. Logistics and businesses that store, ship or deliver groceries, food, goods or services directly to residences or retailers.

(4) “Individuals” means natural persons.

(5) “Gathering” means any grouping together of individuals in a single connected location.

(6) “Mass gathering” means any public or private gathering that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space where individuals are within six (6) feet of each other, but does not include the presence of five (5) or more individuals where those individuals regularly reside. “Mass gathering” does not include “individuals” congregated in a church, synagogue, mosque, or other place of worship.

I HEREBY DIRECT AS FOLLOWS:

- (1) All Mass Gatherings are hereby prohibited under the powers and authority set forth in the New Mexico Public Health Act, and all regulations promulgated pursuant thereto.
- (2) All businesses, except those entities identified as “essential businesses”, are hereby directed to reduce the in-person workforce at each business or business location by 100%. “Essential businesses” may remain open provided they minimize their operations and staff to the greatest extent possible. Further, all essential businesses shall, to the greatest extent possible, adhere to social distancing protocol and maintain at least six-foot social distancing from other individuals, avoid person-to-person contact, and direct employees to wash their hands frequently. Further, all essential businesses shall ensure that all surfaces are cleaned routinely.
- (3) This Order only requires the closure of physical office spaces, retail spaces, or other public spaces of a business and does not otherwise restrict the conduct of business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely.
- (4) All casinos and horse racing facilities shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands.
- (5) Hotels, motels, RV parks, and other places of lodging shall not operate at more than fifty percent of maximum occupancy. Health care workers who are engaged in the

provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays or as temporary housing shall not be counted for purposes of determining maximum occupancy.

- (6) All call centers situated in New Mexico are directed to reduce their in-person workforce by 100%.
- (7) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.
- (8) All public and private employers are required to comply with this Order and any instructions provided by State departments or agencies regarding COVID-19.
- (9) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6 (2012).

I FURTHER DIRECT as follows:

- (1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.
- (2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.
- (3) This Order shall remain in effect for the duration of Executive Order 2020-004. This Order may be renewed consistent with any direction from the Governor.

I FURTHER ADVISE the public to take the following preventive precautions:

- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.
- Avoid crowds.
- Avoid all non-essential travel including plane trips and cruise ships.

THIS ORDER amends the Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19 issued on March 19, 2020, supersedes any other previous orders, proclamations, or directives in conflict.

ATTEST:

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 24TH DAY OF MARCH 2020

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

KATHYLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH

have any of the symptoms; and if they answer in the affirmative to any of the questions, direct them to home or other place of self-isolation;

- avoid having meetings with five or more people;
- avoid non-essential travel; and
- have employees wash their hands frequently and ensure that all surfaces are cleaned routinely.

The DOH Emergency Order does not in any way restrict the conduct of business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely.

Should any insurance company, underwriter, agent, broker or producer with an office in New Mexico wish to keep its physical office space open to the public, it should do so in strict compliance with the requirements of the DOH Emergency Order outlined above. Alternatively, should any insurance company, underwriter, agent, broker or producer with an office in New Mexico wish to close a physical office space to the public, it must ensure that it continues business operations through telecommuting and that it provides reasonable access to its clients or customers remotely.


Please be reminded that the order specifically requires that all call centers situated in New Mexico “reduce their in-person workforce by 100%”.

We also ask for your assistance in fighting fraud or scams related to COVID-19. Please see the information on our website related to this: <https://www.osi.state.nm.us/wp-content/uploads/2020/03/Anti-Fraud-Consumer-Notice-March-2020.pdf>.

Finally, we want to remind you of the importance of advising individuals seeking health coverage that if an excepted benefits policy is being presented or recommended, it **must** include the notice that was included in our Notice and Order of March 12, 2020. A copy of the required notice is attached to this bulletin.

Thank you for your cooperation and for taking action to ensure the safety of New Mexicans.

ISSUED this 26th day of March, 2020.



RUSSELL TOAL
SUPERINTENDENT OF INSURANCE

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
CABINET SECRETARY KATHYLEEN M. KUNKEL**

MARCH 23, 2020

**Public Health Emergency Order Closing All Businesses and Non-Profit
Entities Except for those Deemed Essential and
Providing Additional Restrictions on Mass Gatherings Due to COVID-19**

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, COVID-19 infections in the United States have increased from 1,000 confirmed cases to over 30,000 confirmed cases;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act as invoked through

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(2) “Disease” means an illness, including those caused by infectious agents or their toxic products which may be transmitted to a susceptible host.

(3) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

- a. Health care operations including hospitals, walk-in-care health facilities, emergency veterinary and livestock services, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, and medical supplies and equipment manufacturers and providers;
- b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;
- c. Childcare facilities necessary to provide services to those workers employed by essential businesses and essential non-profit entities;
- d. Grocery stores, all food and beverage stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;
- e. Farms, ranches, and other food cultivation, processing, or packaging operations;

- f. All facilities used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;
- g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;
- h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;
- i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, custodial services, plumbers, electricians, and other skilled trades;
- j. Media services including television, radio, and newspaper operations;
- k. Gas stations, automobile repair facilities, and retailers who generate the majority of their revenue from the sale of automobile repair products;
- l. Hardware stores;
- m. Laundromats and dry cleaner services;
- n. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;
- o. Funeral homes, crematoriums and cemeteries;
- p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;
- q. Real estate services including brokers, title companies, and related services.
- r. Businesses providing mailing and shipping services, including post office boxes;

- s. Laboratories and defense and national security-related operations supporting the United States government or a contractor to the United States government;
- t. Restaurants, but only for delivery or carry out and local breweries or distillers but only for carry out;
- u. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and
- v. Logistics and businesses that store, ship or deliver groceries, food, goods or services directly to residences or retailers.

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I HEREBY DIRECT AS FOLLOWS:

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- (3) This Order only requires the closure of physical office spaces, retail spaces, or other public spaces of a business and does not otherwise restrict the conduct of business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely.
- (4) All casinos and horse racing facilities shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands.

- (5) Hotels, motels, RV parks, and other places of lodging shall not operate at more than fifty percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays or as temporary housing shall not be counted for purposes of determining maximum occupancy.
- (6) All call centers situated in New Mexico are directed to reduce their in-person workforce by 100%.
- (7) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.
- (8) All public and private employers are required to comply with this Order and any instructions provided by State departments or agencies regarding COVID-19.
- (9) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6 (2012).

I FURTHER DIRECT as follows:

- (1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.
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I FURTHER ADVISE the public to take the following preventive precautions:

- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.
- Avoid crowds.
- Avoid all non-essential travel including plane trips and cruise ships.

THIS ORDER amends the Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19 issued on March 19, 2020, supersedes any other previous orders, proclamations, or directives in conflict.

ATTEST:

Maggie Toulouse Oliver

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE



DONE AT THE EXECUTIVE OFFICE
THIS 24TH DAY OF MARCH 2020

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

Kathleen M. Kunkel

KATHYLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH

STATE OF NEW MEXICO

OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT

Russell Toal



DEPUTY SUPERINTENDENT

Robert E. Doucette, Jr.

Notice for Holders or Purchasers of Excepted Benefits Policies

The coverage provided under your benefits plan or policy underwritten by [insert name of underwriter] is limited in nature and may not provide financial protection for significant costs that you could incur for the diagnosis or treatment of COVID-19 ("Coronavirus") related illness.

If you do not have comprehensive major medical coverage, in addition to the plan or policy issued by [company name], you may incur significant uninsured medical expenses associated with the diagnosis and treatment of illness caused by COVID-19.

Major medical plans offer robust consumer protections, and are required to waive all deductibles, co-pays and other cost sharing expenses for the diagnosis or treatment of COVID-19 related illness. Your policy or plan with [excepted benefits company] is not a major medical plan and does not provide such protections.

If you do not have major medical coverage, you may:

1. Contact a licensed insurance broker or agent to see about major medical coverage availability.
2. To see if you are eligible for a special enrollment period for major medical coverage through the New Mexico Health Insurance Exchange, contact beWellnm toll-free at 1-833-862-3935.
3. To see if you are eligible for Medicaid coverage and to complete an application, please call the Human Services Department's Medicaid Expansion Hotline toll-free at 1-855-637-6574 or visit <https://www.yes.state.nm.us/yesnm/home/index>.
4. To see if you are eligible for high risk pool coverage, please contact the New Mexico Medical Insurance Pool (the "High Risk Pool") at 1-844-728-7896 or <https://nmmnip.org/>. If you are uninsured and have a COVID-19 diagnosis, your condition qualifies you for Pool coverage.

The Centers for Disease Control and the New Mexico Department of Health each have websites with considerable information on COVID-19. Visit each website at <https://www.cdc.gov/> or <http://cv.nmhealth.org/>.

Individuals who have symptoms consistent with COVID-19 should immediately call the NM Department of Health at 1-855-600-3453.