

WHEREAS the state of New Hampshire has been a national leader in combating the spread of COVID-19; and

WHEREAS The Governor and Executive Council are considering approval of COVID-19 grant items that contain the following conditions (the "COVID-19 Grant Conditions"):

Coronavirus Disease 2019 (COVID-19) Funds: A recipient of a grant or cooperative agreement awarded by the Department of Health and Human Services (HHS) with funds made available under the Coronavirus Preparedness and Response Supplemental Appropriation Act, 2020 (P. L. 116-123); the Coronavirus Aid, Relief, and Economic Security Act 2020 (the "CARES Act") (P.L. 116-136); the Paycheck Protection Program and Health Care Enhancement Act (P.L. 116-139); the Consolidated Appropriations Act and the Coronavirus Response and Relief Supplement Appropriations Act, 2021 (P.L. 116-260) and/or the American Rescue Plan of 2021 (P.L. 117-2) agrees, as applicable to the award, to: 1) comply with existing and/or future directives and guidance from the Secretary regarding control of the spread of COVID-19; 2) in consultation and coordination with HHS, provide, commensurate with the condition of the individual, COVID-19 patient care regardless of the individual's home jurisdiction and/or appropriate public health measures (e.g., social distancing, home isolation); and 3) assist the United States Government in the implementation and enforcement of federal orders related to quarantine and isolation.

WHEREAS, the New Hampshire Attorney General has advised the Governor and Executive Council that the COVID-19 Grant Conditions do not bind the State to any broad and sweeping federal mandates because the language only applies to a narrow set of guidance and directives, and the Constitution limits the federal government's ability

to use the reference language to bind the State to any broader set of guidance and directives; and

WHEREAS, the Commissioner of the Department of Health and Human Services anticipates that more grants coming before the Governor and Council will contain the COVID-19 Grant Conditions; and

WHEREAS, the Governor and Executive Council have determined that it is necessary to make a clear statement as to important issues relating to federal mandates that involve isolation and quarantine enforcement, Immunization Registry, and the maintenance of the State's workforce; and

WHEREAS, the New Hampshire Executive Council fully supports the Governor's decision to join a multi-state lawsuit, filed in U.S. District Court, against U.S. President Joseph Biden, Safer Federal Workforce Task Force and Federal Acquisition Regulatory Council members, to vindicate its sovereign, quasi-sovereign, proprietary, and parens patriae interests, following the September 9, 2021 signing of Executive Order 14042; and

WHEREAS the Executive Council does not support the Safer Federal Task Force requirement that federal contractors and subcontractors mandate "COVID-19 vaccination of covered contractor employees except in limited circumstances where an employee is legally entitled to an accommodation". The mandate's broad scope applies to "any employee of an organization with a federal contract is a covered contractor" and must be vaccinated by January 4, 2021; and

WHEREAS the Executive Council supports the action of New Hampshire Attorney General to prevent the Safer Federal Work Force Task Force ability to "change the Guidance, including the contractor vaccine mandate, at any time," and have that change be binding. Executive

Order 14042 will have a deleterious effect on the residents of the State of New Hampshire, federal contractors/businesses in the state and multiple state agencies. The enforcement of Executive Order 14042 will make it more difficult to retain and attract employees in New Hampshire and the anticipated large-scale resignations from the vaccine mandate, will stress the state's economy; and

WHEREAS, the Governor and Executive Council oppose the Emergency Temporary Standard issued by the Occupational Safety and Health Administration ("OSHA") that would require all United States employers with 100 or more employees to implement a COVID-19 vaccine mandate for all employees (the "COVID-19 ETS"); and

WHEREAS, OSHA's COVID-19 ETS would affect over 750 New Hampshire businesses and over 250,000 New Hampshire employees, causing further strains on New Hampshire's workforce and interfering with the rights of New Hampshire businesses to set their own policies for their workers; and

WHEREAS, the New Hampshire Executive Council supports the action taken by the Governor and Attorney General to join an 11 state coalition in filing a lawsuit against President Joseph Biden and additional officials in his Administration to stop the implementation of the OSHA Covid-19 ETS.

Now, THEREFORE, BE IT RESOLVED by the Governor and Executive Council that:

1. Consistent with the Constitutional principles articulated by the New Hampshire Attorney General in his October 7, 2021. Memorandum to the Executive Council, the Governor and Executive Council's approval of any items containing the COVID-19 Grant Conditions shall not constitute agreement to

comply with any guidance and directive other than those contained in Exhibits A and B of the New Hampshire Attorney General's October 7, 2021, Memorandum to the Executive Council, as those are the guidance and directives that are clearly and unambiguously included within the COVID-19 Grant Conditions at this time.

2. In the event that the Federal Government attempts to use the COVID-19 Grant Conditions to bind the State of New Hampshire to any guidance or directives other than those identified by the New Hampshire Attorney General in Exhibits A and B of this Memorandum to the Executive Council on October 7, 2021 that would intrude on the State's sovereignty, then the Governor and Executive Council will (i) take necessary actions as permitted by law to enable the New Hampshire Attorney General to take appropriate legal action to prevent the Federal Government from binding the State to any additional guidance or directives and, (ii) in the event that such legal action does not succeed, take all necessary actions as permitted by law to cause all funds which may be subject to the Covid-19 Grant Conditions to be returned to the Federal Government.
3. The Governor and Executive Council support making the New Hampshire Immunization Registry established in RSA 141-C:20-f an opt in system.
4. The Governor and Executive Council encourage New Hampshire employers to work collaboratively with their employees to develop systems that allow for flexibility and the maintenance of a robust workforce. Further, the Governor and Executive Council encourage New Hampshire employers to work collaboratively with their employees to develop vaccination protocols that accommodate an employee's right to refuse a COVID-19 vaccination. Examples of exemptions

from employer mandated vaccinations should include religious and medical objections.