

COMMONWEALTH of VIRGINIA

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State Health Commissioner

Department of Health
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May 19, 2020

DECISION MEMORANDUM

TO: The Honorable Daniel Carey, MD
Secretary of Health and Human Resources

FROM: M. Norman Oliver, MD, MA MNO
State Health Commissioner

SUBJECT: Waiver of Regulatory Provisions Pursuant to Executive Order 51

PURPOSE: To recommend waiver of certain regulatory provisions pursuant to Executive Order 51.

BACKGROUND

The Office of Environmental Health Services (OEHS), Virginia Department of Health (VDH), primarily relies upon Code of Virginia Titles 32.1 (Health), and 35.1 (Hotels, Restaurants, Summer Camps, and Campgrounds) for authority to promulgate regulations and implement environmental health programs. Those regulations apply to applicants who by law must submit permit applications to local health departments to operate various facilities, including restaurants, hotels, campgrounds, and onsite sewage systems. Several chapters of the Virginia Administrative Code containing regulations promulgated by VDH and enforced by local health departments, as guided by OEHS, include language regarding informal administrative appeals, and specific requirements regarding local health directors presiding during those fact-finding conferences. Current conditions and the response necessary to inhibit the spread of COVID-19 render enforcing some regulatory requirements detrimental to that effort. Below follows an analysis of Executive Order Number Fifty-one (51), issued by Governor Ralph S. Northam on March 12, 2020, as well as regulatory sections identified and attached. OEHS believes these regulations warrant waiver during the effective period of Executive Order 51; currently valid through June 10, 2020, unless sooner amended or rescinded.

Executive Order 51: Declaration of a State Emergency Due to Novel Coronavirus (COVID-19) (March 12, 2020)

“C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any

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state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.”

JUSTIFICATION

Based on the discretionary authority provided, as cited in Governor Ralph S. Northam’s Emergency Order 51 above, no legal obstacle prevents the State Health Commissioner from waiving a state requirement or regulation in order to marshal all public resources and appropriate COVID-19 preparedness, response, and recovery measures. This executive branch agency already employed the provided authority to waive regulatory requirements in an effort to achieve this goal.

RECOMMENDATION

To provide local health departments and district directors needed discretion to better allocate resources and concentrate efforts on containing the spread of COVID-19, the specific regulation sections in the attached Waiver of Regulations should be waived.

APPROVAL

Recommend Recommend with Modification Deny

Daniel Carey, MD

[Handwritten Signature] *5/22/20*

Date