State of North Carolina

ROY COOPER
GOVERNOR

June 10, 2021

EXECUTIVE ORDER NO. 219

ESTABLISHING AN INCENTIVE PROGRAM TO ENCOURAGE VACCINATION AGAINST COVID-19

WHEREAS, on March 10, 2020, the undersigned issued Exec. Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the state's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-173, 176-177, 180-181, 183-185, 188-193, 195, 197-198, 200, 204-207, 209-212, and 215-217; and

WHEREAS, the undersigned has taken a science and data-driven approach to implementing public health measures to curb the spread of the virus and to accelerate statewide vaccination efforts; and

WHEREAS, vaccination is currently the most important tool in combating this deadly pandemic, and the undersigned desires to reinforce the importance of vaccination through the creation of a vaccination incentive program, as detailed herein (the "Promotion"); and

Importance of Vaccination against COVID-19

WHEREAS, rigorous clinical trials and studies of vaccines after Food and Drug Administration Authorization have demonstrated that the authorized COVID-19 vaccinations are safe and effective, and that the known and potential benefits of the approved COVID-19 vaccines outweigh the known and potential harms of contracting the COVID-19 virus; and

WHEREAS, COVID-19 vaccines are free to all North Carolinians, regardless of insurance status; and

WHEREAS, North Carolinians have made great progress in getting vaccinated, and every day, more North Carolinians are protected from COVID-19 infections, hospitalizations, and deaths; and

WHEREAS, specifically, as of the date of this Executive Order, fifty percent (50%) of the state's population over age eighteen (18) is fully vaccinated, and fifty-four percent (54%) of the state's population over age eighteen (18) is partially vaccinated; and

WHEREAS, as of the date of this Executive Order, seventy-eight percent (78%) of the state's population age sixty-five (65) and older is fully vaccinated, and eighty-one percent (81%) of the state's population age sixty-five (65) and older is partially vaccinated; and

WHEREAS, the state's public health experts have advised that more progress on vaccination against COVID-19 is still needed in order to obtain levels of immunity necessary to protect the public health of all North Carolinians; and

WHEREAS, the sooner more North Carolinians can get vaccinated against COVID-19, the sooner they can more safely return to pre-pandemic activities with their friends, family, and neighbors; and

WHEREAS, the state's public health experts have advised that programs to encourage vaccination will be particularly helpful in reducing burdens on providers in rural areas associated with diagnosis and treatment of COVID-19 because the percentage of individuals who have been vaccinated against COVID-19 in rural areas is significantly lower than in urban areas; and

WHEREAS, the state's public health experts have advised that increasing vaccination rates will advance local health departments' mission of vaccinating as many eligible North Carolinians as possible and will reduce burdens on local health departments by decreasing COVID-19 morbidity and mortality and thereby reducing the need for local health departments to perform COVID-19 testing and tracing services; and

Establishing the Promotion

WHEREAS, behavioral scientists indicate that individuals can be motivated to get vaccinated against COVID-19 by the chance to win monetary prizes, and experience from other states which have established vaccination incentive programs demonstrate a rise in vaccination rates following the announcement of such incentive programs; and

WHEREAS, specifically, data from Ohio indicates that Ohio experienced at least a twenty-eight (28%) increase in vaccination rates among Ohioans age sixteen (16) and older the week after announcing the "Vax-A-Million" incentive program, after experiencing weeks of declining vaccination rates; and

WHEREAS, accordingly, in an effort to incentivize more North Carolinians to obtain the COVID-19 vaccine, the undersigned hereby delegates the authority and directs the Department of Health and Human Services ("DHHS"), the North Carolina State Lottery Director ("NCEL"), and the North Carolina State Education Assistance Authority ("NCSEAA") to establish and operate an incentive program whereby residents of North Carolina who have received their first shot in a one or two-dose vaccine series against the COVID-19 virus can be entered into a randomized drawing, with a chance to win one of four prizes in the amount of one million dollars ($1,000,000) each, or a chance to win one of four scholarships at an institution of post-secondary education in the amount of one hundred and twenty-five thousand dollars ($125,000) each; and

WHEREAS, NCEL has the technical and operational expertise to help conduct the Promotion in accordance with its standard practices, and while ensuring the integrity of the process and security of individuals' data; and

WHEREAS, NCSEAA, in partnership with the College Foundation, Inc. (the "College Foundation"), has the technical and operational expertise to award and manage the scholarship accounts for scholarship prize winners and to assist in the transfer of the account to scholarship prize winners when they reach the age of twenty-five (25); and

WHEREAS, the prizes for the Promotion and any associated expenses with operating the Promotion shall be funded by the Coronavirus Relief Fund; and

WHEREAS, the federal administration and the United States Department of Treasury have encouraged the use of federal coronavirus relief funds for vaccination incentive programs such as the Promotion, and the federal administration has pledged to fund states' efforts to incentivize vaccination; and

WHEREAS, the funding for the Promotion has been allocated to the state, and appropriated for use by the North Carolina General Assembly, for certain purposes which include the Promotion; and

WHEREAS, the Promotion will assist local health departments in accomplishing their mission of vaccinating the greatest number of North Carolinians possible; and

WHEREAS, by increasing the number of North Carolinians vaccinated against COVID-19, the Promotion will reduce costs to local health departments and local hospitals who must care for individuals who become ill from COVID-19; and

WHEREAS, the funds allocated to the Promotion will not reduce the amount of the state's contribution to education or other state programs; and

WHEREAS, neither the state's establishment or operation of, nor an individual's participation in, the Promotion constitutes "gambling" or any other related activities that are prohibited by Article 37 of Chapter 14 of the North Carolina General Statutes; and

WHEREAS, the Promotion does not constitute a "lottery," as defined by N.C. Gen. Stat. § 18C-103 and the Promotion is not subject to the State Lottery Act; and

WHEREAS, the undersigned respects individual choice as to whether or not to participate in the Promotion, and, accordingly, Promotion prize winners will be given the opportunity to decline the prize; and

WHEREAS, the Promotion will be operated in accordance with official rules established by NCEL in consultation with DHHS ("Rules"); and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(4) gives the undersigned the authority to "cooperate and coordinate" with the President of the United States and the heads of the

departments and agencies of the federal government, and with other appropriate federal officers and agencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of departments, offices, and agencies of the state in response to the emergency, and their officers and personnel are required to cooperate with and extend such services and facilities to the undersigned upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, the undersigned has obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30 on those provisions of this Executive Order requiring concurrence.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the authority set forth above, **IT IS ORDERED:**

Section 1. Establishing the Promotion.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

1.1. **Delegation of Authority.** To meet the goal of vaccinating North Carolinians against COVID-19, thereby saving lives in this pandemic, the undersigned delegates the authority and directs DHHS, NCEL, and NCSEAA to establish and operate a vaccination incentive program for eligible North Carolinians, which shall, at a minimum, provide for the following:

a. Conditions on Eligibility; Prizes. Subject to Section 1.1(c)-(d); (i) any North Carolina resident eighteen (18) years or older who has received at least one dose of a one or two-dose COVID-19 vaccination series at a vaccination location in the state of North Carolina will be automatically entered to win one of four prizes in the amount of one million dollars ($1,000,000) each, for a grand total of four million dollars ($4,000,000) (each, a "Cash Prize") and (ii) North Carolina residents twelve (12) years to seventeen (17) years old who have received at least one dose of a one or two-dose COVID-19 vaccination series at a vaccination location in the state of North Carolina will be automatically entered for the chance to win one of four scholarship prizes, worth one hundred and twenty-five thousand dollars ($125,000) each, for use towards expenses at an institution of post-secondary education that are permitted under a 529 tax-advantaged scholarship account, for a total of five hundred thousand dollars ($500,000) in scholarship funding (each, a "Scholarship Prize").

b. Individuals Vaccinated on or after the Day of the Announcement of the Promotion will Receive Two (2) Entries. In order to incentivize individuals who have not yet been vaccinated against COVID-19 to do so, individuals who receive their first shot in a one or two-dose series on or after June 10, 2021, will be given two (2) entries into the drawing, which will increase their odds of winning a Cash Prize or Scholarship Prize. Individuals who have completed their vaccination series or who have received their first shot prior to June 10, 2021, will receive one (1) entry.

c. Exclusions from Eligibility for the Promotion, Generally. The following individuals are excluded from participation in the Promotion:

    1. Individuals who do not meet the criteria for eligibility in Section 1.1(a).

    2. Those individuals who have received their COVID-19 vaccinations at locations operated by the Department of Defense, Veterans Administration, and Indian Health Services, as the state does not have access to data from these

federal vaccination registries. DHHS is working to make these individuals eligible for entry, but if, at the time of the drawing for prizes, DHHS does not have access to a person's vaccination data from the above-referenced or other locations, that person will be ineligible for that drawing.

d. Other Ineligible Individuals. The following individuals are prohibited from claiming a Cash Prize or Scholarship Prize in the Promotion:

1. The Governor and his immediate family members.
2. All members of the North Carolina Council of State and their immediate family members.
3. The Secretary of DHHS, and her immediate family members.
4. All employees and independent contractors of the Office of the Secretary of DHHS and their immediate family members.
5. All commissioners of the North Carolina State Lottery Commission and their immediate family members.
6. Any employee, independent contractor or employee of the NCEL who has access to the random number generator used for the drawings and their immediate family members.
7. Any incarcerated offender in custody serving an active felony sentence in a federal or state correctional institution.
8. Those employees who assisted in the creation of the Promotion at the NCEL, DHHS, the North Carolina Department of Justice, the Department of Information and Technology, and the Governor's Office, and their immediate family members.
9. Any employee or independent contractor of DHHS or employee or independent contractor of a third-party vendor of DHHS who has access to the COVID-19 Vaccine Management System, and their immediate family members.
10. Any member of the Eastern Band of Cherokee Indians ("ECBI") who has access to the vaccination database for the ECBI.
11. The independent auditor certifying the drawings.
12. Any other individual rendered ineligible under the Rules governing the Promotion.

In addition, those employees who assisted in the creation of the Promotion at NCSEAA and College Foundation, and their immediate family members, are ineligible to claim a Cash Prize and all employees of NCSEAA and College Foundation, and their immediate family members are ineligible to claim a Scholarship Prize in this Promotion.

For purposes of this Promotion, "immediate family members" means any family members living in the same household, and in addition, spouses, domestic partners, children (including, without limitation, step-children), and parents (including, without limitation, step-parents).

1.2. **Operation of the Promotion is Subject to Rules; Rules Incorporated by Reference**.

a. Rules Available Here. The Promotion shall be operated in accordance with Rules, available here: https://nclottery.com/promo/Summer-Vax-Cash-Rules. The Rules are hereby incorporated by reference into this Executive Order, to the extent not inconsistent with this Executive Order.

b. Rules Control. In the event of a conflict between this Executive Order and the Rules, as the rules may be amended, the Rules will control.

1.3. **The Promotion Does Not Constitute Gambling.** Neither the state's establishment or operation of, nor an individual's participation in, the Promotion constitutes "gambling" or any other related activities that are prohibited by Article 37 of Chapter 14 of the North Carolina General Statutes.

Section 2. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, commissions, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 3. Savings Clause.

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 4. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 5. Effective Date.

This Executive Order is effective immediately. This Executive Order shall remain in effect through August 16, 2021, unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 10th day of June in the year of our Lord two thousand and twenty-one.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State