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RATIFICATION OF PRESIDENT'S DIRECTIVES

Action Requested: Ratify, subject to any applicable preliminary injunctions, President Richards' actions directing the Regent universities to (1) proceed with applying the EO 14042 contract requirements to those employees working directly on a covered federal contract and (2) make their vaccination verification and accommodation systems available to all campus employees on a voluntary basis.

Executive Summary: During the meeting of November 4, 2021, the Board of Regents authorized the Board President to direct the Regent institutions to take action deemed necessary by the Board President to comply with the requirements of Federal Executive Order 14042 and any other applicable state or Federal law, regulation, regulatory guidance, or contract requirement regarding mask, physical distancing, and vaccination requirements to prevent or mitigate COVID-19. Any action taken by the Board President is subject to ratification by the Board of Regents.

Executive Order 14042 – On September 9, 2021, President Biden issued Federal Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors. On September 24, the Safer Federal Workforce Taskforce issued guidance for federal contractors and subcontractors with regard to mask, physical distancing, and vaccination requirements under certain federal contracts. On November 9, President Richards formally directed the Regent universities to proceed with applying the EO 14042 contract requirements for those employees working directly on a covered federal contract. President Richards further instructed the universities to make their vaccination verification and accommodation systems available to all employees on a voluntary basis.

On December 7, 2021, the U.S. District Court for the Southern District of Georgia issued a nationwide preliminary injunction regarding the EO 14042 requirements. On December 20, the U.S. District Court for the Eastern District of Missouri entered an order granting a preliminary injunction in the 10 plaintiff states, including Iowa. Subsequently, the Federal Office of Management and Budget issued guidance stating that the Government will take no action to enforce contract clauses implementing the EO 14042 requirements. The preliminary injunctions and guidance remain in place as of the drafting of this memorandum.

In response to the preliminary injunctions, the Regent universities ceased applying the EO 14042 requirements to employees working on federal contracts. The request to ratify President Richards' directive regarding EO 14042 is subject to any existing preliminary injunctions or applicable future court orders.

OSHA Emergency Temporary Standards – On November 5, 2021, the Federal Occupational Safety and Health Administration issued an emergency temporary standard (ETS) establishing mask, vaccination, and testing requirements for covered private employers with 100 employees or more. On November 12, the Fifth Circuit granted a stay of enforcement of the ETS pending judicial review of the petitioners' underlying complaints. A number of legal challenges to the ETS were consolidated before the Sixth Circuit. On December 17, the Sixth Circuit granted the Federal Government's motion to dissolve the stay, and various parties petitioned the United States Supreme Court to grant a stay. On January 13, 2022, the Supreme Court issued an order granting

a stay of the OSHA ETS pending resolution of the underlying complaints and petitions. Subsequently, OSHA issued an order withdrawing the ETS effective January 26, 2022.

CMS Regulations – On November 5, 2021, the Secretary of Health and Human Services issued an interim final rule amending Centers for Medicare and Medicaid Services (CMS) regulations to require that covered providers assure that certain staff are vaccinated against COVID-19 or have a documented exemption. Subsequently, the U.S. District Courts for the Western District of Louisiana and the Eastern District of Missouri issued preliminary injunctions covering the 24 plaintiff states, including Iowa. The Fifth and Eighth Circuits denied the Government’s motion to lift the preliminary injunctions, and the Government filed a petition with the United States Supreme Court. On January 13, 2022, the Supreme Court issued an order staying enforcement of the preliminary injunctions pending resolution of the underlying complaints and petitions. The CMS regulations are in effect on a nationwide basis as of the drafting of this memorandum. Board office staff have been working with representatives from each campus to determine the scope of the impact of these regulations, if any, at each Regent university.