

Center for Law and the Public's Health
at Georgetown and Johns Hopkins Universities

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The Model State Emergency Health Powers Act
As of October 23, 2001

DRAFT
Legislative Specifications

ARTICLE I TITLE, FINDINGS, PURPOSES, AND DEFINITIONS

- Section 101 **Short title** - provides a short title for the Act.
- Section 102 **Legislative findings** - provides a sample set of findings underlying the need for protecting the public health in an emergency.
- Section 103 **Purposes** - summarizes the purposes of the Act, namely to provide the Governor, public health authority, and other state authorities with the powers and ability to prevent, detect, manage, and contain emergency health threats without unduly interfering with civil rights and liberties.
- Section 104 **Definitions** - provides key definitions, including “public health emergency,” “bioterrorism,” “public health authority (PHA),” and “public safety authority.”

ARTICLE II MEASURES TO DETECT AND TRACK POTENTIAL AND EXISTING PUBLIC HEALTH EMERGENCIES

- Section 201 **Reporting** - requires health care workers, coroners, pharmacists, veterinarians, laboratories, and others to make written reports of suspect illnesses or conditions to the PHA to detect a potential serious threat to the public’s health.
- Section 202 **Tracking** - requires PHA to investigate and track potential serious threats to the public health.
- Section 203 **Information sharing** - authorizes public health and safety authorities to share information within limits to detect and respond to serious public health threats.

ARTICLE III DECLARING STATE OF PUBLIC HEALTH EMERGENCY

- Section 301 **Standards for declaration** - Governor can declare a state of public health emergency under a set of criteria and in consultation with the PHA or others.
- Section 302 **Procedures for declaration** - requires Governor to issue and executive order.

- Section 303 **Effect of declaration** - triggers the public health and other response mechanisms in the Act, including a series of emergency powers.
- Section 304 **Enforcement** - allows PHA to seek assistance of public safety authority
- Section 305 **Termination of declaration** - requires termination of a state of public health emergency by executive order within 30 days, unless renewed by Governor; allows state legislature to terminate via super-majority vote after 60 days.

ARTICLE IV SPECIAL POWERS DURING STATE OF PUBLIC HEALTH EMERGENCY: CONTROL OF PROPERTY

- Section 401 **Emergency measures concerning dangerous facilities and materials** - allows PHA to close, evacuate, or decontaminate any facility or material that poses a danger to the public health without compensation to the owner.
- Section 402 **Access to and control of facilities and property** - allows PHA broad access and use of private facilities or materials during a public health emergency with compensation to private owners in the event of a taking.
- Section 403 **Safe disposal of infectious waste** - sets rules for the safe disposal of infectious waste to prevent the spread of an illness or health condition.
- Section 404 **Safe disposal of corpses** - provides guidelines for the safe disposal of corpses that may pose a public health threat, including use of private facilities as needed.
- Section 405 **Control of health care supplies** - authorizes PHA to procure, obtain, and ration needed health supplies (e.g., anti-toxins, serums, vaccines, antibiotics, and other medicines), as well as control their distribution during a public health emergency.
- Section 406 **Compensation** - provides compensation for private owners whose property is taken during a public health emergency. Compensation does not occur if the public health agency is exercising police powers (e.g., a nuisance abatement), but only if there is a “taking” of property.
- Section 407 **Destruction of property** - requires some civil procedures prior to the destruction property where possible.

**ARTICLE V SPECIAL POWERS DURING STATE OF PUBLIC HEALTH
EMERGENCY: CONTROL OF PERSONS**

- Section 501 **Control of individuals** - generally authorizes PHA to use every available means to control a threat to the public health during an emergency.
- Section 502 **Mandatory medical examinations** - allows PHA to test or treat exposed or infected individuals, where necessary, and require the assistance of health workers.
- Section 503 **Isolation and quarantine** - empowers PHA to implement mandatory isolation (for infected persons) or quarantine (for exposed persons) measures for a limited period of time and with respect to individual liberties consistent with due process.
- Section 504 **Vaccination and treatment** - PHA may require the vaccination of persons to prevent the spread of an infectious condition. Persons who refuse may be isolated or quarantined.
- Section 505 **Collection of laboratory specimens; performance of tests** - authorizes collection of lab specimens and sharing of information with public safety authorities to facilitate criminal investigations related to the public health emergency.
- Section 506 **Access and disclosure of patient records** - allows access to records of patients under care of the PHA to persons with a need to know; prohibits many disclosures of identifiable data outside the public health or safety setting without informed consent.
- Section 507 **Licensing and appointment of health personnel** - lifts licensing requirements to encourage out-of-state health care workers to participate in a public health emergency; authorizes qualified individuals to assist with duties of state medical examiner and coroners.

**ARTICLE VI PUBLIC INFORMATION REGARDING PUBLIC HEALTH
EMERGENCY**

- Section 601 **Dissemination of information** - requires PHA to inform the population of threats to the public health during a state of public health emergency. Information shall be provided in multiple languages (where needed) and in a medium that is accessible to all parts of the population.

Section 602 **Provision of access to mental health support personnel** - mental health personnel shall be made available to address psychological responses to the public health emergency.

ARTICLE VII PLANNING FOR PUBLIC HEALTH EMERGENCY

Section 701 **Public Health Emergency Planning Commission** - authorizes Governor to establish a Commission to begin planning for a public health emergency.

Section 702 **Public Health Emergency Plan** - within six months of enactment of the Model Act, the Commission shall develop a comprehensive detection and response plan involving the PHA, public safety agencies, and others. The plan shall be reviewed and revised as needed at least every two years.

ARTICLE VIII MISCELLANEOUS

Section 801 **Titles** - titles and subtitles in the Act are instructive, not binding.

Section 802 **Rules and regulations** - allows PHA to create administrative regulations or rules to further the purposes of the Act.

Section 803 **Financing and expenses** - authorizes Governor, within specific limits, to transfer state funds to respond to a public health emergency without specific legislative authorization. Funds shall be repaid to existing state accounts as soon as possible. Expenses for a public health emergency shall be authorized by the Governor, but shall not exceed a predetermined cap.

Section 804 **Liability** - creates general immunity for Governor, PHA, and other state executive agencies or actors for their actions during a public health emergency. Some private actors are also statutorily immune in specific circumstances.

- Section 805 **Compensation** - requires compensation for private property that is lawfully taken or appropriated by a PHA during a public health emergency in the amount and pursuant to procedures typical of a taking proceeding in non-emergency situations. Compensation is not required, however, for police power actions that close, evacuate, decontaminate, or destroy facilities or materials that constitute an endangerment to the public's health (e.g., a nuisance abatement).
- Section 806 **Severability** - the provisions of the Act are severable; if any provision is rendered invalid, other provisions remain.
- Section 807 **Repeals** - a placeholder for specific state laws which the Model Act repeals.
- Section 808 **Saving clause** - state laws that do not conflict with the Model Act, or provide greater protections, continue to have effect.
- Section 809 **Conflicting laws** - as a model state law, the Act cannot preempt any federal law or regulation, but does preempt inconsistent state laws.
- Section 810 **Reports** - requires Governor to regularly report to the state legislature those actions taken under the Act.
- Section 811 **Effective date** - the Act takes effect upon passage by the legislature and signature of the Governor.

For more information, please contact:

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