



SECTION HIGHLIGHTS

This section describes some of the important legal issues that need to be considered when responding to a severe public health emergency, or when updating local and state public health laws.

- » Public health laws vary by state and region.
- » Public health laws are currently being updated in many states because they may be outdated, unconstitutional, and/or too specific to provide officials with the powers they need to protect the public during a public health emergency.
- » Some of the legal issues surrounding public health emergencies include privacy and due process protection; clarity of jurisdiction; and liability and compensation for those harmed.
- » Federal, tribal, state, and—in some cases—local governments have some legal authority to issue isolation and quarantine orders.
- » Several resources, such as the Model State Emergency Health Powers Act and the Uniform Emergency Volunteer Health Practitioners Act, are available to guide officials through the process of updating laws. Links to resources are provided.



LEGAL AND POLICY CONSIDERATIONS

PUBLIC HEALTH LAWS

Legal preparedness is an important part of comprehensive preparedness for bioterrorism and public health emergencies. The attacks of September 11 and the anthrax mail scare served as a wake-up call to federal, tribal, state, and local governments for the need to review and modernize their public health laws. Many laws relating to quarantine authority, compelled vaccinations, and the commandeering of property have not changed since the early and middle decades of the 20th century (<http://www.nga.org/cda/files/0405BIOTERRORISMLAWS.pdf>). Currently, public health laws may be:

- › **Outdated:** They do not provide adequate powers because they do not reflect modern diseases (e.g., the state of New York had to call an emergency session to change existing laws to address SARS after its emergence within the state).
- › **Unconstitutional:** While some laws may be sufficiently broad to be applied to modern health threats, they may be deemed unconstitutional because they violate privacy rights, fair hearing rights, and other rights.
- › **Unclear:** Individual laws are often passed on an as-needed basis (such as the New York SARS example above); when reviewed comprehensively, they may be confusing and unclear. Specifically, public health laws are often unclear as to jurisdictional authority across local, state, tribal, and federal governments.

LEGAL QUESTIONS THAT MAY ARISE DURING A PUBLIC HEALTH EMERGENCY

Many legal questions may be asked during a response to a severe public health emergency, which need to be considered when reviewing or updating local and state public health laws. These questions include:

- › Who can declare a public health emergency?
- › Can we investigate contacts?
- › Can we examine and test people?
- › Can we share information? With whom? How much information can be shared? Can we decline to share information?
- › Can we treat and vaccinate?
- › What are the legal issues related to triage and allocation of scarce medications, supplies, and services?

- › How do we respond to people who decline treatment?
- › Can we isolate and quarantine? (See below for more information on this topic.)
- › Can we obtain facilities and supplies? From whom?
- › How do we address any liability issues related to using nongovernmental personnel or volunteers? How about health care professionals from other states?
- › In what situations are we liable?
- › Can the scope of practice for health care providers be expanded?
- › Do we have the legal structure to support emergency triage and resource allocation strategies?

(Adapted from Sapsin, J.W. & Teret, S.P. (2002). The Center for Law and The Public's Health at Georgetown & Johns Hopkins Universities. Introduction to public health law for bioterrorism preparedness and response. <http://www.publichealthlaw.net/Training/TrainingPDFs/Center%20BT%20Module.ppt>)

LEGAL AUTHORITY RELATED TO ISOLATION AND QUARANTINE

Federal, tribal, state, and—in some cases—local governments have the legal authority to issue orders for isolation and

HIPAA PRIVACY RULE

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule recognizes that various agencies and public officials will need protected health information to deal effectively with a bioterrorism threat or other public health emergency. To facilitate the communications that are essential to a quick and effective response to such events, the Privacy Rule permits covered entities to disclose needed information to public officials in a variety of ways. Covered entities include health plans, health care clearinghouses (e.g., billing services), and health care providers who transmit health information in electronic form in connection with certain transactions (<http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm>). For applications of the Privacy Rule during bioterrorism and other emergencies, see answers 397 and 960 on Health Information Privacy and Civil Rights Questions & Answers found at <http://www.hhs.gov/faq/>. For more information on the Privacy Rule and public health, see <http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm>.



quarantine. Generally, state and local jurisdictions have primary responsibility for isolation and quarantine within their borders. For instance, if an outbreak were to occur within a specific locality, local officials may assume primary responsibility for exercising their quarantine authorities. If an outbreak affects more than one community, there are no relevant local ordinances, or the local outbreak has the potential to spread into other communities, states may take primary responsibility, in conjunction with local authorities. Similarly, if state and local jurisdictions are unable to adequately respond to an outbreak, or if an outbreak becomes widespread, the federal government may exercise its authorities. Because these authorities generally exist at all levels of government, who actually implements the authorities may depend upon a number of factors, including prior planning, resources, and capabilities.

The federal government is primarily responsible for preventing diseases from being introduced and spread in the United States from foreign countries as well as interstate and national outbreaks. The Division of Global Migration and Quarantine at the Centers for Disease Control and Prevention (<http://www.cdc.gov/ncidod/dq/mission.htm>) enforces regulations that are intended to prevent the introduction, transmission, and/or spread of communicable diseases from foreign countries into the United States. During the SARS outbreak in 2003, federal quarantine officers took a number of actions to protect the health of the public, ranging from distributing health notices to air travelers with information about SARS to boarding planes to see if ill travelers had symptoms of the disease.

FOR FIRST RESPONDERS

First responders may be curious to know whether liability issues are different during severe public health emergencies. If responders do not exceed the scope of practice as defined by the county or agency medical director and do not perform in a grossly negligent or reckless manner, they may, depending on applicable law, be protected from liability. Volunteer first responders are also generally protected from liability in many situations. It is important to note, however, that during a severe public health emergency first responders may be called on to serve other roles than they typically perform, such as enforcing quarantine orders. It is, therefore, advisable for volunteer first

DISTINCTION BETWEEN ISOLATION AND QUARANTINE

Isolation removes people who are ill with contagious diseases from the general public and restricts their activities to stop the spread of a disease.

Quarantine separates people who have been potentially exposed and may be infected but are not yet ill to stop the spread of that disease.

responders to research and become familiar with the applicable laws and regulations in their respective states.

For more specifics on these issues and the answers to some common questions, see pp. 7–14 of the “Civil Legal Liability and Public Health Emergencies” checklist found at <http://www.publichealthlaw.net/Resources/ResourcesPDFs/Checklist%203.pdf>.

RESOURCES FOR UPDATING PUBLIC HEALTH LAWS

To assess legal preparedness, state health departments have made extensive use of the Model State Emergency Health Powers Act (MSEHPA). Developed by the Center for Law and the Public’s Health at Georgetown and Johns Hopkins Universities, MSEHPA grants public health powers to state and local public health authorities to ensure a strong, effective, and timely planning, prevention, and response mechanism to public health emergencies (including bioterrorism) while also respecting individual rights. MSEHPA has been used by state and local lawmakers and health officials nationwide as a guide for considering public health law reform in their states. As of July 15, 2006, The Center for Law and the Public’s Health reports that the Act has been introduced in whole or part through bills or resolutions in 44 states and the District of Columbia. Thirty-eight states and the District of Columbia have passed bills or resolutions that include provisions from or closely related to the Act. The extent to which the Act’s provisions were incorporated into each state’s laws varies. For more information, please refer to the specific legislative bills or resolutions referenced in the State Legislative Activity Table (<http://www.publichealthlaw.net/MSEHPA/MSEHPA%20Leg%20Activity.pdf>) and the MSEHPA Legislative Surveillance Table (<http://www.publichealthlaw.net/MSEHPA/MSEHPA%20Surveillance.pdf>).



The National Conference of Commissioners of Uniform State Laws has drafted a model act called the Uniform Emergency Volunteer Health Practitioners Act (UEVHPA), which if enacted by states, should assist states in the use and exchange of volunteer health professionals during an emergency. This act, which was finalized in 2006, was developed in response to problems related to a lack of uniformity in state laws that became evident during the hurricane season of 2005. Health professionals from outside the affected Gulf Coast states who volunteered to provide assistance to disaster victims were delayed, and in some cases prevented, from providing services because they were unable to quickly and clearly obtain authorization to practice within the affected states. UEVHPA establishes a system whereby health professionals may register either in advance of or during an emergency to provide volunteer services in an enacting state through various registration systems. The entire act, as well as additional information including related legislative activity, can be found on the Act's Web site at <http://www.uevhp.org>.

Together with the Centers for Disease Control and Prevention's Public Health Law Program, the Association of State and Territorial Health Officials, and the National Association of County and City Health Officials, the Center for Law and the Public's Health prepared Checklists on Legal Preparedness for Public Health Emergencies that public health agencies can use, at their own initiative, to assess the following three important components of their legal preparedness:

- › Interjurisdictional legal coordination for public health emergency preparedness
- › Local public health emergency legal preparedness and response
- › Civil legal liability related to public health emergencies

These checklists are available at <http://www.publichealthlaw.net/Resources/BTlaw.htm>.

Another resource is the Turning Point Model State Public Health Act, developed by the Turning Point Public Health Statute Modernization Collaborative. This is a tool for state, local, and tribal governments to use in revising or updating public health statutes and administrative rules. Funded by the Robert Wood Johnson Foundation as part of its Turning

Point Initiative to strengthen the public health system in the United States, the Collaborative is a multidisciplinary group composed of representatives from five states and nine national organizations and government agencies, assisted by experts in specialty areas of public health. More information on the Collaborative can be found at http://turningpointprogram.org/Pages/ph_stat_mod.html.

Other tools and resources for updating and understanding public health laws include:

- › The Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities. <http://www.publichealthlaw.net>.
- › The Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities. Center's short course: Introduction to public health law for bioterrorism preparedness and response. <http://www.publichealthlaw.net/Training/Sources.htm>.
- › Centers for Disease Control and Prevention. Public health law program. <http://www2a.cdc.gov/phlp/>.
- › Centers for Disease Control and Prevention. (2004). Fact sheet—Legal authorities for isolation and quarantine. http://www.cdc.gov/ncidod/dq/sars_facts/factsheetlegal.pdf.
- › National Conference of State Legislatures. (2002). The Model State Emergency Health Powers Act: A checklist of issues. <http://www.ncsl.org/programs/health/modelact.pdf>.
- › National Conference of State Legislatures. (2002) Public health: A legislator's guide. <http://www.ncsl.org/programs/health/publichealth.htm>.
- › National Governors Association. Issue brief—Bioterrorism and state public health laws: New challenges. <http://www.nga.org/cda/files/0405BIOTERRORISMLAWS.pdf>.
- › U.S. Department of Health and Human Services. Public Health Guidance on Pandemic Influenza for State and Local Partners. Appendix 1. Checklist of Legal Considerations for Pandemic Influenza in Your Community. <http://www.hhs.gov/pandemicflu/plan/part2.html#apd1>.

Please note that this section provides only a brief and limited review of the legal issues related to terrorism and other public health emergencies. More detailed information can be found through the resources listed in this section and your other local or state legal resources.