

MODEL STATE EMERGENCY HEALTH POWERS ACT

Draft as of December 21, 2001

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**ARTICLE VI SPECIAL POWERS DURING A STATE OF PUBLIC HEALTH EMERGENCY: PROTECTION OF PERSONS**

**Section 601 Protection of persons.** During a state of public health emergency, the public health authority shall use every available means to prevent the transmission of infectious disease and to ensure that all cases of contagious disease are subject to proper control and treatment.

*Legislative History.* In Section 601, the text immediately following the heading "Protection of individuals" was adapted from CAL. HEALTH & SAFETY CODE § 120575 (West 1996).

**Section 602 Medical examination and testing.** During a state of public health emergency the public health authority may perform physical examinations and/or tests as necessary for the diagnosis or treatment of individuals.

- (a) Medical examinations or tests may be performed by any qualified person authorized to do so by the public health authority.
- (b) Medical examinations or tests must not be such as are reasonably likely to lead to serious harm to the affected individual.
- (c) The public health authority may isolate or quarantine, pursuant to Section 604, any person whose refusal of medical examination or testing results in uncertainty regarding whether he or she has been exposed to or is infected with a contagious or possibly contagious disease or otherwise poses a danger to public health.

*Legislative History.* Section 602 was adapted from CAL. HEALTH & SAFETY CODE § 120580 (West 1996 & Supp. 2001); CAL. HEALTH & SAFETY CODE § 120540 (West 1996); N.Y. COMP. CODES R. & REGS. tit. 10, § 2.5 (LEXIS through Oct. 12, 2001).

**Section 603 Vaccination and treatment.** During a state of public health emergency the public health authority may exercise the following emergency powers over persons as necessary to address the public health emergency □

- (a) **Vaccination.** To vaccinate persons as protection against infectious disease and to prevent the spread of contagious or possibly contagious disease.
  - (1) Vaccination may be performed by any qualified person authorized to do so by the public health authority.
  - (2) A vaccine to be administered must not be such as is reasonably likely to lead to serious harm to the affected individual.
  - (3) To prevent the spread of contagious or possibly contagious disease the public health authority may isolate or quarantine, pursuant to Section 604,

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persons who are unable or unwilling for reasons of health, religion, or conscience to undergo vaccination pursuant to this Section.

- (b) **Treatment.** To treat persons exposed to or infected with disease.
- (1) Treatment may be administered by any qualified person authorized to do so by the public health authority.
  - (2) Treatment must not be such as is reasonably likely to lead to serious harm to the affected individual.
  - (3) To prevent the spread of contagious or possibly contagious disease the public health authority may isolate or quarantine, pursuant to Section 604, persons who are unable or unwilling for reasons of health, religion, or conscience to undergo treatment pursuant to this Section.

*Legislative History.* Section 603 was adapted from CAL. HEALTH & SAFETY CODE §§ 120175, 120575, 120605 (West 1996); CAL. HEALTH & SAFETY CODE § 120580 (West 1996 & Supp. 2001).

**Section 604 Isolation and quarantine.**

- (a) **Authorization.** During the public health emergency, the public health authority may isolate (consistent with the definition of "isolation" in Section 103(h)) or quarantine (consistent with the definition of quarantine in Section 103(o)) an individual or groups of individuals. This includes individuals or groups who have not been vaccinated, treated, tested, or examined pursuant to Sections 602 and 603. The public health authority may also establish and maintain places of isolation and quarantine, and set rules and make orders. Failure to obey these rules, orders, or provisions shall constitute a misdemeanor.
- (b) **Conditions and principles.** The public health authority shall adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:
- (1) Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others and may include, but are not limited to, confinement to private homes or other private and public premises.
  - (2) Isolated individuals must be confined separately from quarantined individuals.
  - (3) The health status of isolated and quarantined individuals must be monitored regularly to determine if they require isolation or quarantine.
  - (4) If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease he or she must promptly be removed to isolation.

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- (5) Isolated and quarantined individuals must be immediately released when they pose no substantial risk of transmitting a contagious or possibly contagious disease to others.
  - (6) The needs of persons isolated and quarantined shall be addressed in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care.
  - (7) Premises used for isolation and quarantine shall be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harms to persons isolated and quarantined.
  - (8) To the extent possible, cultural and religious beliefs should be considered in addressing the needs of individuals, and establishing and maintaining isolation and quarantine premises.
- (c) **Cooperation.** Persons subject to isolation or quarantine shall obey the public health authority's rules and orders; and shall not go beyond the isolation or quarantine premises. Failure to obey these provisions shall constitute a misdemeanor.
- (d) **Entry into isolation or quarantine premises.**
- (1) **Authorized entry.** The public health authority may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.
  - (2) **Unauthorized entry.** No person, other than a person authorized by the public health authority, shall enter isolation or quarantine premises. Failure to obey this provision shall constitute a misdemeanor.
  - (3) **Potential isolation or quarantine.** Any person entering an isolation or quarantine premises with or without authorization of the public health authority may be isolated or quarantined pursuant to Section 604(a)(b).

**Section 605 Procedures for isolation and quarantine.** During a public health emergency, the isolation and quarantine of an individual or groups of individuals shall be undertaken in accordance with the following procedures.

- (a) **Temporary isolation and quarantine without notice.**
- (1) **Authorization.** The public health authority may temporarily isolate or quarantine an individual or groups of individuals through a written directive if delay in imposing the isolation or quarantine would significantly jeopardize the public health authority's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.
  - (2) **Content of directive.** The written directive shall specify the following: (i) the identity of the individual(s) or groups of individuals subject to isolation or quarantine; (ii) the premises subject to isolation or quarantine; (iii) the

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date and time at which isolation or quarantine commences; (iv) the suspected contagious disease if known.; and (v) a copy of Article 6 and relevant definitions of this Act.

- (3) **Copies.** A copy of the written directive shall be given to the individual to be isolated or quarantined or, if the order applies to a group of individuals and it is impractical to provide individual copies, it may be posted in a conspicuous place in the isolation or quarantine premises.
  - (4) **Petition for continued isolation or quarantine.** Within ten (10) days after issuing the written directive, the public health authority shall file a petition pursuant to Section 605(b) for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals.
- (b) **Isolation or quarantine with notice.**
- (1) **Authorization.** The public health authority may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.
  - (2) **Content of petition.** A petition under subsection (b)(1) shall specify the following: (i) the identity of the individual(s) or groups of individuals subject to isolation or quarantine; (ii) the premises subject to isolation or quarantine; (iii) the date and time at which isolation or quarantine commences; (iv) the suspected contagious disease if known; (v) a statement of compliance with the conditions and principles for isolation and quarantine of Section 604(b); and (vi) a statement of the basis upon which isolation or quarantine is justified in compliance with this Article. The petition shall be accompanied by the sworn affidavit of the public health authority attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.
  - (3) **Notice.** Notice to the individuals or groups of individuals identified in the petition shall be accomplished within twenty-four (24) hours in accordance with the rules of civil procedure.
  - (4) **Hearing.** A hearing must be held on any petition filed pursuant to this subsection within five (5) days of filing of the petition. In extraordinary circumstances and for good cause shown the public health authority may apply to continue the hearing date on a petition filed pursuant to this Section for up to ten (10) days, which continuance the court may grant in its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence.
  - (5) **Order.** The court shall grant the petition if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to

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prevent or limit the transmission of a contagious or possibly contagious disease to others.

- (i) An order authorizing isolation or quarantine may do so for a period not to exceed thirty (30) days.
  - (ii) The order shall (a) identify the isolated or quarantined individuals or groups of individuals by name or shared or similar characteristics or circumstances; (b) specify factual findings warranting isolation or quarantine pursuant to this Act; (c) include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this Act; and (d) served on affected individuals or groups of individuals in accordance with the rules of civil procedure.
- (6) **Continuances.** Prior to the expiration of an order issued pursuant to Section 605(b)(5), the public health authority may move to continue isolation or quarantine for additional periods not to exceed thirty (30) days each. The court shall consider the motion in accordance with standards set forth in Section 605(b)(5).
- (c) **Relief from isolation and quarantine.**
- (1) **Release.** An individual or group of individuals isolated or quarantined pursuant to this Act may apply to the trial court for an order to show cause why the individual or group of individuals should not be released. The court shall rule on the application to show cause within forty-eight (48) hours of its filing. If the court grants the application, the court shall schedule a hearing on the order to show cause within twenty-four (24) hours from issuance of the order to show cause. The issuance of an order to show cause shall not stay or enjoin an isolation or quarantine order.
  - (2) **Remedies for breach of conditions.** An individual or groups of individuals isolated or quarantined pursuant to this Act may request a hearing in the trial court for remedies regarding breaches to the conditions of isolation or quarantine. A request for a hearing shall not stay or enjoin an isolation or quarantine order.
    - (i) Upon receipt of a request under this subsection alleging extraordinary circumstances justifying the immediate granting of relief, the court shall fix a date for hearing on the matters alleged not more than twenty-four (24) hours from receipt of the request.
    - (ii) Otherwise, upon receipt of a request under this subsection the court shall fix a date for hearing on the matters alleged within five (5) days from receipt of the request.
  - (3) **Extensions.** In any proceedings brought for relief under this subsection, in extraordinary circumstances and for good cause shown the public health authority may move the court to extend the time for a hearing, which extension the court in its discretion may grant giving due regard to the rights

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of the affected individuals, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence.

- (d) **Proceedings.** A record of the proceedings pursuant to this Section shall be made and retained. In the event that, given a state of public health emergency, parties can not personally appear before the court, proceedings may be conducted by their authorized representatives and be held via any means that allows all parties to fully participate.
- (e) **Court to appoint counsel and consolidate claims.**
- (1) **Appointment.** The court shall appoint counsel at state expense to represent individuals or groups of individuals who are or who are about to be isolated or quarantined pursuant to the provisions of this Act and who are not otherwise represented by counsel. Appointments shall be made in accordance with the procedures to be specified in the Public Health Emergency Plan and shall last throughout the duration of the isolation or quarantine of the individual or groups of individuals. The public health authority must provide adequate means of communication between such individuals or groups and their counsel.
- (2) **Consolidation.** In any proceedings brought pursuant to this Section, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence, the court may order the consolidation of individual claims into group or claims where:
- (i) the number of individuals involved or to be affected is so large as to render individual participation impractical;
  - (ii) there are questions of law or fact common to the individual claims or rights to be determined;
  - (iii) the group claims or rights to be determined are typical of the affected individuals' claims or rights; and
  - (iv) the entire group will be adequately represented in the consolidation.

*Legislative History.* Sections 604 and 605 were adapted from CAL. HEALTH & SAFETY CODE §§ 120130, 120225 (West 1996); N.H. REV. STAT. ANN. § 141-C:11 -14; CONN. GEN. STAT. ANN. § 19a-221 (West 1958).

**Section 606 Collection of laboratory specimens; performance of tests.** The public health authority may, for such period as the state of public health emergency exists, collect specimens and perform tests on living persons as provided in Section 602 and also upon deceased persons and any animal (living or deceased), and acquire any previously collected specimens or test results that are reasonable and necessary to respond to the public health emergency.

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- (a) **Marking.** All specimens shall be clearly marked.
- (b) **Contamination.** Specimen collection, handling, storage, and transport to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration and provide for the safe collection, storage, handling, and transport of such specimen.
- (c) **Chain of custody.** Any person authorized to collect specimens or perform tests shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of specimens to be tested. This requirement applies to all specimens, including specimens collected using on-site testing kits.
- (d) **Criminal investigation.** Recognizing that, during a state of public health emergency, any specimen collected or test performed may be evidence in a criminal investigation, any business, facility, or agency authorized to collect specimens or perform tests shall provide such support as is reasonable and necessary to aid in a relevant criminal investigation.

*Legislative History.* Section 606 was adapted from CAL. BUS. & PROF. CODE § 681 (LEXIS through Aug. 12, 2001); MISS. CODE ANN. § 71-7-9 (2000); GA. CODE ANN. § 34-9-415 (1998 & Supp. 2001); and CAL. PENAL CODE § 13823.11 (LEXIS through Aug. 12, 2001).

**Section 607 Access to and disclosure of protected health information.**

- (a) **Access.** Access to protected health information of persons who have participated in medical testing, treatment, vaccination, isolation, or quarantine programs or efforts by the public health authority during a public health emergency shall be limited to those persons having a legitimate need to acquire or use the information to:
  - (1) provide treatment to the individual who is the subject of the health information,
  - (2) conduct epidemiologic research, or
  - (3) investigate the causes of transmission.
- (b) **Disclosure.** Protected health information held by the public health authority shall not be disclosed to others without individual written, specific informed consent, except for disclosures made:
  - (1) directly to the individual;
  - (2) to the individual's immediate family members or personal representative;
  - (3) to appropriate federal agencies or authorities pursuant to federal law;
  - (4) pursuant to a court order to avert a clear danger to an individual or the public health; or
  - (5) to identify a deceased individual or determine the manner or cause of death.

*Legislative History.* Section 607 was adapted from LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

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**Section 608 Licensing and appointment of health personnel.** The public health authority may exercise, for such period as the state of public health emergency exists, the following emergency powers regarding licensing and appointment of health personnel□

- (a) **Health care providers.** To require in-state health care providers to assist in the performance of vaccination, treatment, examination, or testing of any individual as a condition of licensure, authorization, or the ability to continue to function as a health care provider in this State.
- (b) **Health care providers from other jurisdictions.** To appoint and prescribe the duties of such out-of-state emergency health care providers as may be reasonable and necessary to respond to the public health emergency.
  - (1) The appointment of out-of-state emergency health care providers may be for a limited or unlimited time, but shall not exceed the termination of the declaration of a state of public health emergency. The public health authority may terminate the out-of-state appointments at any time or for any reason provided that any such termination will not jeopardize the health, safety, and welfare of the people of this State.
  - (2) The public health authority may waive any or all licensing requirements, permits, or fees required by the State code and applicable orders, rules, or regulations for health care providers from other jurisdictions to practice in this State.
  - (3) Any out-of-state emergency health care provider appointed pursuant to this Section shall not be held liable for any civil damages as a result of medical care or treatment related to the response to the public health emergency unless such damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of the patient.
- (c) **Personnel to perform duties of medical examiner or coroner.** To authorize the medical examiner or coroner to appoint and prescribe the duties of such emergency assistant medical examiners or coroners as may be required for the proper performance of the duties of the office.
  - (1) The appointment of emergency assistant medical examiners or coroners may be for a limited or unlimited time, but shall not exceed the termination of the declaration of a state of public health emergency. The medical examiner or coroner may terminate such emergency appointments at any time or for any reason, provided that any such termination will not impede the performance of the duties of the office.
  - (2) The medical examiner or coroner may waive licensing requirements, permits, or fees required by the State code and applicable orders, rules, or regulations for the performance of these duties.

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- (3) Any emergency assistant medical examiner or coroner appointed pursuant to this Section and acting without malice and within the scope of the prescribed duties shall be immune from civil liability in the performance of such duties.

*Legislative History.* Section 608(b) was adapted from FLA. STAT. ANN. § 768.13(2)(b)(1) (West 1997 & Supp. 2001). Subsection (c) was adapted from D.C. CODE ANN. § 2-1605 (2001); KAN. STAT. ANN. § 22a-226(e) (1995); GA. CODE ANN. § 45-16-23 (1990); COLO. REV. STAT. ANN. § 30-10-601 (West 1990).

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**ARTICLE VII PUBLIC INFORMATION REGARDING PUBLIC HEALTH EMERGENCY**

**Section 701 Dissemination of information.** The public health authority shall inform the people of the State when a state of public health emergency has been declared or terminated, how to protect themselves during a state of public health emergency, and what actions are being taken to control the emergency.

- (a) **Means of dissemination.** The public health authority shall provide information by all available and reasonable means calculated to bring the information promptly to the attention of the general public.
- (b) **Languages.** If the public health authority has reason to believe there are large numbers of people of the State who lack sufficient skills in English to understand the information, the public health authority shall make reasonable efforts to provide the information in the primary languages of those people as well as in English.
- (c) **Accessibility.** The provision of information shall be made in a manner accessible to individuals with disabilities.

*Legislative History.* In Section 701, the main text following the title "Dissemination of information" is adapted from 6 COLO. CODE REGS. § 1009-5, reg. 1 (WESTLAW through Aug. 2001). Subsection (a) is adapted from 2001 ILL. LAWS 73(3); ALASKA STAT. §§ 26.23.020, 26.23.200 (Michie 2000). Subsection (b) is adapted from CAL. ELEC. CODE § 14201(c) (West 1996).

**Section 702 Access to mental health support personnel.** During and after the declaration of a state of public health emergency, the public health authority shall provide information about and referrals to mental health support personnel to address psychological responses to the public health emergency.

*Legislative History.* Section 702 is adapted from the *Bioterrorism Readiness Plan: A Template for Healthcare Facilities* (Prepared by APIC Bioterrorism Task Force & CDC Hospital Infections Program Bioterrorism Working Group).

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### ARTICLE VIII MISCELLANEOUS

**Section 801 Titles.** For the purposes of this Act, titles and subtitles of Articles, Sections, and Subsections are instructive, but not binding.

**Section 802 Rules and regulations.** The public health authority and other affected agencies are authorized to promulgate and implement such rules and regulations as are reasonable and necessary to implement and effectuate the provisions of this Act. The public health authority and other affected agencies shall have the power to enforce the provisions of this Act through the imposition of fines and penalties, the issuance of orders, and such other remedies as are provided by law, but nothing in this Section shall be construed to limit specific enforcement powers enumerated in this Act.

**Section 803 Financing and expenses.**

- (a) **Transfer of funds.** The Governor may transfer from any fund available to the Governor in the State treasury such sums as may be necessary during a state of public health emergency.
- (b) **Repayment.** Monies so transferred shall be repaid to the fund from which they were transferred when monies become available for that purpose, by legislative appropriation or otherwise.
- (c) **Conditions.** A transfer of funds by the Governor under the provisions of this Section may be made only when one or more of the following conditions exist:
  - (1) No appropriation or other authorization is available to meet the public health emergency.
  - (2) An appropriation is insufficient to meet the public health emergency.
  - (3) Federal monies available for such a public health emergency require the use of State or other public monies.
- (d) **Expenses.** All expenses incurred by the State during a state of public health emergency shall be subject to the following limitations:
  - (1) No expense shall be incurred against the monies authorized under this Section, without the general approval of the Governor.
  - (2) The aggregate amount of all expenses incurred pursuant to this Section shall not exceed [state amount] for any fiscal year.
  - (3) Monies authorized for a state of public health emergency in prior fiscal years may be used in subsequent fiscal years only for the public health emergency for which they were authorized. Monies authorized for a public health emergency in prior fiscal years, and expended in subsequent fiscal years for the public health emergency for which they were authorized, apply toward the [state amount] expense limit for the fiscal year in which they were authorized.

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*Legislative History.* In Section 803, Subsections (a) and (b) are adapted from GA. CODE ANN. § 38-3-51 (1995). Subsections (c) and (d) are adapted from ARIZ. REV. STAT. ANN. § 35-192 (West 2000).

**Section 804    Liability.**

- (a) **State immunity.** Neither the State, its political subdivisions, nor, except in cases of gross negligence or willful misconduct, the Governor, the public health authority, or any other State or local official referenced in this Act, is liable for the death of or any injury to persons, or damage to property, as a result of complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant to this Act during a state of public health emergency.
- (b) **Private liability.**
  - (1) During a state of public health emergency, any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, together with that person's successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises under such license, privilege, or other permission, or for negligently causing loss of, or damage to, the property of such person.
  - (2) During a state of public health emergency, any private person, firm or corporation and employees and agents of such person, firm or corporation in the performance of a contract with, and under the direction of, the State or its political subdivisions under the provisions of this Act shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.
  - (3) During a state of public health emergency, any private person, firm or corporation and employees and agents of such person, firm or corporation, who renders assistance or advice at the request of the State or its political subdivisions under the provisions of this Act shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.
  - (4) The immunities provided in this Subsection shall not apply to any private person, firm, or corporation or employees and agents of such person, firm, or corporation whose act or omission caused in whole or in part the public health emergency and who would otherwise be liable therefor.

*Legislative History.* Section 804 is adapted from 2001 ILL. LAWS 73(15), (21).

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**Section 805 Compensation.**

- (a) **Taking.** Compensation for property shall be made only if private property is lawfully taken or appropriated by a public health authority for its temporary or permanent use during a state of public health emergency declared by the Governor pursuant to this Act.
- (b) **Actions.** Any action against the State with regard to the payment of compensation shall be brought in the courts of this State in accordance with existing court laws and rules, or any such rules that may be developed by the courts for use during a state of public health emergency.
- (c) **Amount.** The amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to non-emergency eminent domain procedures, as provided in [*State to insert appropriate statutory citation*], except that the amount of compensation calculated for items obtained under Section 505 shall be limited to the costs incurred to produce the item.

*Legislative History.* Section 805 is adapted from COLO. REV. STAT. § 24-32-2111.5 (LEXIS through 2001 Sess.).

**Section 806 Severability.** The provisions of this Act are severable. If any provision of this Act or its application to any person or circumstances is held invalid in a federal or state court having jurisdiction, the invalidity will not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

*Legislative History.* Section 806 is adapted from the LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

**Section 807 Repeals.** The following acts, laws, or parts thereof, are explicitly repealed with the passage of this Act:

- (a) [*To be inserted in each state considering passage of the Act*]
- (b) [*To be inserted in each state considering passage of the Act*]
- (c) [*To be inserted in each state considering passage of the Act*] . . .

*Legislative History.* Section 807 is adapted from the LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

**Section 808 Saving clause.** This Act does not explicitly preempt other laws or regulations that preserve to a greater degree the powers of the Governor or public health authority, provided such laws or regulations are consistent, and do not otherwise restrict or interfere, with the operation or enforcement of the provisions of this Act.

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*Legislative History.* Section 808 is adapted from the LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

**Section 809    Conflicting laws.**

- (a) **Federal supremacy.** This Act does not restrict any person from complying with federal law or regulations.
- (b) **Prior conflicting acts.** In the event of a conflict between this Act and other State or local laws or regulations concerning public health powers, the provisions of this Act apply.

*Legislative History.* Section 809 is adapted from the LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

**Section 810    Effective date.** The provisions of this Act shall take effect upon signature of the Governor. [*State to insert language appropriate to its legislative process.*]

**Kennedy, Debora**

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**From:** Sweet, Richard  
**Sent:** Friday, December 21, 2001 10:07 AM  
**To:** Kennedy, Debora; Nelson, Robert P.  
**Cc:** Grapentine, Mark; Lonergan, Sandra  
**Subject:** Model Act changes to Wis. statutes

Debora/Bob,

I met with Rep. Underheim, Sandy Lonergan, Mark Grapentine, and 2 people from DHFS yesterday and these are the changes they agreed should be included in a bill draft relating to the Model Act on emergency health powers:

- DAK ✓ 1. The statute that requires specified health professionals to report communicable diseases would be expanded to apply to all health care providers, as defined in s. 146.81(1), Stats. 252.05(1)
- ~~DAK~~ ✓ 2. The provisions from Article II of the Model Act regarding reporting by pharmacists would be included in our statutes. 252.02(7), 440.142, now stats, eff. date
- ZLR, MGD 3. The Article II provision about information sharing between public health and public safety authorities would be included. However, we would use the term "law enforcement agency" rather than public safety agency.
- ZLR 4. The Article II provision on coroners would be included.
- DAK ✓ 5. Section 95.22, Stats., would be amended to require DATCP to share information received with DHFS. 95.22 (about any diseases that DHFS asks for)
- RPN ✓ 6. In declaring an emergency under ch. 166, Stats., the Governor would be given the discretion to name DHFS as the lead state agency if the Governor determines that the emergency was primarily related to public health.
- RPN ✓ 7. The Article III provision relating to suspending legal requirements would be included, but the Governor would only have the authority to suspend rules, not statutes.
- DAK ✓ 8. The Article IV provisions on disposal of corpses would be included. 157.055
- DAK ✓ 9. The portion of Article IV that allows a public health authority to procure drugs and supplies would be included, but not the portion dealing with rationing and price fixing. 250.042
- DAK ✓ 10. Section 252.06(10), Stats., would be amended to specify that the county or municipality would pay for necessary medical care, food, and other articles when the person is quarantined or isolated in a place that is not the residence of either the person or an immediate family member of the person. Also, "reasonable means of communication" would specifically be included in this provision. 252.06(10)(a), (b) 5+6.
- DAK ✓ 11. The Article V provision on who may enter an isolation or quarantine premises would replace our current statute. 252.06(4)
- DAK ✓ 12. The Article V provision on compulsory vaccination would be included, just during declared

emergencies. 250.041

DAK ~~13.~~ Section 146.82, Stats., would be amended to allow release of health care records to immediate family members or life partners and to allow release pursuant to an executive order. Both of these provisions would apply only during declared emergencies.

MES ? 14. The Article V provisions about appointment of emergency medical examiners or coroners would be included, just during declared emergencies.

DAK (15) Article VI, dealing with providing public information, would be included. 250.042(3)

DAK ✓ 16. Instead of Article VII, DHFS would be required to submit a biennial report to the Legislature and the Governor on the preparedness of the public health system to address public health emergencies. The report would be prepared in consultation with the Adjutant General, local health agencies, other health care providers, and law enforcement agencies. 250.03(3)

RPN/ ✓  
DAK 17. The statutes would be amended to allow the Governor to transfer emergency management funds from the Department of Military Affairs to DHFS if the Governor names DHFS as the lead state agency during a declared emergency.

Let me know if you need any clarification. Thanks for your help.

*Dick Sweet*  
Senior Staff Attorney  
Wisconsin Legislative Council  
(608)266-2982  
richard.sweet@legis.state.wi.us



**Kennedy, Debora**

---

**From:** Sweet, Richard  
**Sent:** Thursday, January 24, 2002 5:12 PM  
**To:** Kennedy, Debora; Nelson, Robert P.  
**Cc:** Grapentine, Mark; Lonergan, Sandra  
**Subject:** Model Act

**Debora/Bob:**

**Sen. Rosenzweig and Rep. Underheim decided to request that you work from the December 21 draft of the Model Act in preparing your draft. They also decided to drop item 13 in the original e-mail message; that item deals with confidentiality of patient records. For items 1, 5, 6, 16, and 17 in the original message, there shouldn't be any change involved, except that they want to use the new definition of "public health emergency" for purposes of the draft.**

**Thanks.**

---

***Dick Sweet***  
**Senior Staff Attorney**  
**Wisconsin Legislative Council**  
**(608)266-2982**  
**richard.sweet@legis.state.wi.us**



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: authorizing a declaration of ~~the~~ actions under a state of  
2 emergency related to public health, requiring <sup>and</sup> the exercise of rule-making  
3 authority, and providing a penalty. making an appropriation,

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided on a subsequent version.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

INSERT  
1-4

- 4 SECTION 1. 95.22 of the statutes is renumbered 95.22 (1).
- 5 SECTION 2. 95.22 (2) of the statutes is created to read:
- 6 95.22 (2) The department shall provide the reports of any communicable
- 7 diseases under sub. (1) to the department of health and family services, as requested
- 8 by that department.

\*\*\*\*NOTE: I drafted this as an ongoing requirement; you may, however, want it to apply only during the period of a state of emergency relating to public health. In addition, I required that DATCP share with DHFS only the information that DHFS asks for, to avoid flooding DHFS with information in which DHFS may have little interest.

SECTION 3. 157.055 of the statutes is created to read:

**157.055 Disposal of human remains during state of emergency relating to public health.** (1) In this section:

(a) "Funeral establishment" has the meaning given in s. 445.01 (6).

(b) "Public health authority" has the meaning given in s. 250.01 (6g).

(2) Notwithstanding ss. 69.18 (4), 445.04 (2), ~~and~~ 445.14, during a period of a state of emergency related to public health declared by the governor under s. 166.03

(1) (b) 1., a public health authority may do all of the following:

(a) Adopt and enforce measures that are reasonable and necessary to provide for the safe disposal of human remains, including by embalming, burial, cremation, interment, disinterment, transportation, and other disposal.

(b) Take possession and control of any human remains.

(c) Order the disposal, through burial or cremation, of any human remains of an individual who has died of a communicable disease, within 24 hours after the individual's death and consider, to the extent feasible, the religious, cultural, or individual beliefs of the deceased individual or his or her family in disposing of the remains.

(d) If reasonable and necessary for emergency response, compel a funeral establishment, as a condition of its permit under s. 445.105 (1), to accept human remains or provide the use of its business or facility, including by transferring the management and supervision of the funeral establishment to the public health authority for a period of time not to exceed the period of the state of emergency.

(e) If reasonable and necessary for emergency response, procure, by condemnation, any funeral establishment and take possession of it.

979.01(3)(3m), and (4), 979.02, and 979.10

\*\*\*\*NOTE: Condemnation permanently transfers property to the state; assuming that the state of emergency is temporary, is condemnation appropriate for this circumstance, if DHFS already, under the draft, has the power to transfer the management and supervision of the funeral establishment to itself? Presumably, if condemnation is effected, the funeral establishment would require state employees to staff it; is that your intent? If it is your intent to permit condemnation, s. 32.22, stats., provides for an expedited procedure for blighted property. Would you want to make this procedure applicable to the condemnation of funeral establishments?

1 (f) Require the labeling of all human remains before disposal with all available  
2 identifying information and information concerning the circumstances of death and,  
3 in addition, require that the human remains of an individual with a communicable  
4 disease be clearly tagged to indicate that remains contain a communicable disease  
5 and, if known, the specific communicable disease.

6 (g) Maintain or require the maintenance of a written or electronic record of all  
7 human remains that are disposed of, including all available identifying information  
8 and information concerning the circumstances of death and disposal. If it is  
9 impossible to identify human remains prior to disposal, the public health authority  
10 may require that a qualified person obtain any fingerprints, photograph, obtain any

11 <sup>of</sup> identifying dental information, and collect a specimen of deoxyribonucleic acid from  
12 the human remains and transmit this information to the public health authority.

INS 3-12A

INSERT 3-12B

13 SECTION 4. 250.01 (6g) of the statutes is created to read:

14 250.01 (6g) "Public health authority" means the department, if the governor  
15 declares under s. 166.03 (1) (b) 1. a state of emergency related to public health and  
16 designates the department as the lead public health authority to respond to that  
17 emergency.

18 SECTION 5. 250.01 (6r) of the statutes is created to read:

19 250.01 (6r) "Public health emergency" has the meaning given in s. 166.02 (7).

20 SECTION 6. 250.03 (3) of the statutes is created to read:

1           250.03 (3) Biennially, beginning on July 1, 2002, after first consulting with the  
 2 adjutant general, local health departments, health care providers, as defined in s.  
 3 <sup>146.81 (1)</sup> ~~246.82 (2)~~, and law enforcement agencies, as defined in s. <sup>115.77 (1)(b)</sup> ~~265.77 (2)(b)~~, the  
 4 department shall submit to the legislature under s. 13.172 (2) and to the governor  
 5 a report on the preparedness of the public health system to address public health  
 6 emergencies.

166.03 (1)(b) 1.

7           SECTION 7. 250.042 of the statutes is created to read:

8           **250.042 Powers and duties of the department as public health**  
 9 **authority.** (1) If the governor declares a state of emergency related to public health  
 10 under s. ~~266.03 (2)(b) 1~~ and designates the department as the lead public health  
 11 authority, the department shall act as the public health authority during the period  
 12 of the state of emergency. During the period of the state of emergency, the secretary  
 13 may designate a local health department as an agent of the department and confer  
 14 upon the local health department, acting under that agency, the powers and duties  
 15 of the public health authority.

16           (2) As the public health authority, the department may do any of the following:

17           (a) From the appropriation under s. 20.435 (1) (e), purchase, store, or distribute  
 18 antitoxins, serums, vaccines, immunizing agents, antibiotics, and other  
 19 pharmaceutical agents or medical supplies that the department determines are  
 20 advisable to control a public health emergency.

\*\*\*\*NOTE: In this paragraph, I did not include language from the Model Act that permits the public health authority to purchase and distribute these materials in order to prepare for a public health emergency. I also did not include language from the Model Act that allows the public health authority to take and distribute antitoxins, serums, etc., during a state of emergency relating to public health; does this latter drafting decision comport with your intent?

21           (b) Act as specified in s. 252.041.

1 (3) (a) As the public health authority, the department shall inform state  
2 residents of all of the following:

3 1. When a state of emergency related to public health has been declared or is  
4 terminated.

5 2. How to protect themselves from a public health emergency.

6 3. What actions the public health authority is taking to control a public health  
7 emergency.

8 (b) The public health authority shall provide the information specified in par.  
9 (a) by all available and reasonable means calculated to inform the general public,  
10 including reasonable efforts to make the information accessible to individuals with  
11 disabilities and to provide the information in the primary languages of individuals  
12 who do not understand English.

13 SECTION 8. 251.05 (3) (e) of the statutes is created to read:

14 251.05 (3) (e) Act as agent of the department, if designated by the secretary  
15 under s. 250.042 (1).

16 SECTION 9. 252.02 (title) of the statutes is amended to read:

17 252.02 (title) **Powers and duties of department.**

History: 1981 c. 291; 1993 a. 27 s. 284; Stats. 1993 s. 252.02; 1999 a. 150 s. 672.

18 SECTION 10. 252.02 (7) of the statutes is created to read:

19 252.02 (7) The department shall promulgate rules that specify medical  
20 conditions treatable by prescriptions or nonprescription drug products for which  
21 pharmacists and pharmacies must report under s. 440.142 (1).

22 SECTION 11. 252.02 (6) of the statutes is amended to read:

MOVE  
TO  
p. 6,  
after  
\*\*\*  
NOTE

## SECTION 11

1           252.02 (6) ~~The~~ In addition to the powers specified under s. 250.04<sup>1</sup>, the  
 2 department may authorize and implement all emergency measures necessary to  
 3 control communicable diseases.

History: 1981 c. 291; 1993 a. 27 s. 284; Stats. 1993 s. 252.02; 1999 a. 150 s. 672.

\*\*\*\*NOTE: Do you wish to keep the broad (but vague and unspecified) powers of the  
 department as they are under current law in this subsection?

Material from p. 5 goes HERE

4           SECTION 12. 252.041 of the statutes is created to read:

5           **252.041 Compulsory vaccination during a state of emergency.** During  
 6 the period under which the department is authorized to act as the public health  
 7 authority, as specified in s. 250.042 (2), the department, as the public health  
 8 authority, may do all of the following as necessary to address a public health  
 9 emergency:

10           (1) Authorize and order any qualified person to perform a vaccination on any  
 11 individual unless the vaccination is reasonably likely to lead to serious harm to the  
 12 individual.

13           (2) Isolate or quarantine, under s. 252.06, any individual who is unable or  
 14 unwilling for reasons of health, religion, or conscience to receive vaccination under  
 15 sub. (1).

16           SECTION 13. 252.05 (1) of the statutes is amended to read:

17           252.05 (1) ~~Any person licensed, permitted, registered or certified under ch. 441~~  
 18 ~~or 448 knowing or having health care provider, as defined in s. 146.81 (1), who knows~~  
 19 ~~or has reason,~~ reason to know that a person treated or visited by him or her has a  
 20 communicable disease, or having a communicable disease, has died, shall report the  
 21 appearance of the communicable disease or the death to the local health officer. The  
 22 local health officer shall report this information to the department or shall direct the

1 person reporting to report to the department. Any person directed to report shall  
2 submit this information to the department.

History: 1971 c. 164 s. 91; 1981 c. 291; 1993 a. 16; 1993 a. 27 ss. 286 to 291, 293, 294, 471; Stats. 1993 s. 252.05; 1993 a. 183.

3 **SECTION 14.** 252.06 (1) of the statutes is amended to read:

4 252.06 (1) The department or the local health officer acting on behalf of the  
5 department may require isolation of ~~the a patient or of an individual under s. 252.041~~  
6 (2), quarantine of contacts, concurrent and terminal disinfection, or modified forms  
7 of these procedures as may be necessary and ~~which are~~ as determined by the  
8 department by rule.

History: 1981 c. 291; 1983 a. 189 s. 329 (19); 1993 a. 27 s. 295; Stats. 1993 s. 252.06.

9 **SECTION 15.** 252.06 (4) of the statutes is repealed and recreated to read:

10 252.06 (4) (a) 1. No person, other than a person authorized by the public health  
11 authority or agent of the public health authority, may enter an isolation or  
12 quarantine premises.

13 2. A violation of subd. 1. is subject to a fine not to exceed \$ \_\_\_\_\_ or  
14 imprisonment not to exceed \_\_\_\_\_, or both.

\*\*\*\*NOTE: The Model Act specifies that a violation of this prohibition is punishable  
by a misdemeanor, but does not specify the punishment. Of the penalties for  
misdemeanors under s. 939.51, stats., which class (A, B, or C) would you like to have  
applied?

15 (b) Any person, whether authorized by a public health authority or agent of a  
16 public health authority or not, who enters an isolation or quarantine premises may  
17 be subject to quarantine or isolation under this section.

18 **SECTION 16.** 252.06 (10) (a) of the statutes is amended to read:

19 252.06 (10) (a) ~~Expenses~~ Except as provided in par. (b) 5., expenses for  
20 necessary medical care, food, and other articles needed for the care and treatment



**SECTION 16**

1 of the infected person shall be charged against the person or whoever is liable for the  
2 person's support.

History: 1981 c. 291; 1983 a. 189 s. 329 (19); 1993 a. 27 s. 295; Stats. 1993 s. 252.06.

3 **SECTION 17. 252.06 (10) (b) 5. of the statutes is created to read:**

4 **252.06 (10) (b) 5.** If a person is quarantined or isolated in a place that is not the  
5 residence of the person or of an immediate family member of the person, the expenses  
6 of necessary medical care, food, and other articles needed for the care and treatment  
7 of the person.

8 **SECTION 18. 252.06 (10) (b) 6. of the statutes is created to read:**

9 **252.06 (10) (b) 6.** The expense of providing a reasonable means of  
10 communication for the person.

11 **SECTION 19. 440.142 of the statutes is created to read:**

12 **440.142 Reporting potential causes of public health emergency.** A  
13 pharmacist or pharmacy shall report to the department of health and family services  
14 all of the following:

15 (1) An unusual ~~decrease~~ <sup>increase</sup> in the number of prescriptions dispensed or  
16 nonprescription drug products sold for the treatment of medical conditions specified  
17 by the department of health and family services by rule under s. 252.02 (7).

18 (2) An unusual increase in the number of prescriptions dispensed that are  
19 antibiotic drugs.

20 (3) The dispensing of a prescription for treatment of a disease that is relatively  
21 uncommon or may be associated with bioterrorism, as defined in s. 166.02 (1r).

INSERT 8-21 →

22 **SECTION 20. Nonstatutory provisions.**

23 (1) **MEDICAL CONDITIONS FOR WHICH PHARMACEUTICAL DRUGS ARE DISPENSED OR**  
24 **SOLD; RULES. (a)** The department of health and family services shall submit in

1 proposed form the rules required under section 252.02 (7) of the statutes, as created  
2 by this act, to the legislative council staff under section 227.15 (1) of the statutes no  
3 later than the first day of the 6th month beginning after the effective date of this  
4 subsection.

5 (b) Using the procedure under section 227.24 of the statutes, the department  
6 of health and family services may promulgate rules required under section 252.02  
7 (7) of the statutes, as created by this act, for the period before the effective date of the  
8 rules submitted under paragraph (a), but not to exceed the period authorized under  
9 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a),  
10 (2) (b) and (3) of the statutes, the department of health and family services is not  
11 required to provide evidence that promulgating a rule under this paragraph as an  
12 emergency rule is necessary for the preservation of the ~~public~~ <sup>public</sup> peace, health, safety,  
13 or welfare and is not required to provide a finding of emergency for a rule  
14 promulgated under this ~~paragraph~~ <sup>paragraph</sup>.

15 **SECTION 21. Effective dates.** This act takes effect on the day after publication,  
16 except as follows:

17 (1) **MEDICAL CONDITIONS FOR WHICH PHARMACEUTICAL DRUGS ARE DISPENSED OR**  
18 **SOLD; RULES.** The treatment of section 440.142 (1) of the statutes takes effect on the  
19 first day of the fifth month beginning after publication.

20 (END)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4713/?rnins  
RPN:.....

INSERT 1-4

1 SECTION 1. 20.435 (1) (e) of the statutes is created to read:

2 20.435 (1) (e) *Public health emergency*. A sum sufficient to respond to a state  
3 of emergency related to public health only if the governor declares such an  
4 emergency and designates the department of health and family services as the lead  
5 public health authority to respond to the emergency under s. 166.03 (1) (b) 1.

\*\*\*\*NOTE: Perhaps this language is too limiting. Should this appropriation account be available to the department of health and family services whenever the governor declares a state of emergency related to public health? Will that department need extra funds when such an emergency is declared, regardless of who is designated as the lead agency. As drafted, this appropriation account is available only when that state of emergency is declared and the governor designates the department of health and family services as the lead public health authority to respond to the emergency.

6 SECTION 2. 166.02 (1p) of the statutes is created to read:

7 166.02 (1p) "Biological agent" means any of the following:

8 (a) A select agent that is a virus, bacterium, rickettsia, fungus, or toxin that is  
9 specified under 42 CFR 72, Appendix A.

10 (b) A genetically modified microorganism or genetic element from an organism  
11 under ~~subd. 1~~ <sup>par. (a)</sup> that is shown to produce or encode for a factor associated with a  
12 disease.

13 (c) A genetically modified microorganism or genetic element that contains  
14 nucleic acid sequences coding for a toxin under ~~subd. 1~~ <sup>par. (a)</sup> or its toxic subunit.

\*\*\*\*NOTE: The Model Act refers to "infectious agent" and "biological toxin" and defines neither of those terms. In contrast, this draft uses a definition of "biological agent" that is taken from the definition of "select agent" under 42 CFR 72.6 (j) (the federal rules that govern interstate shipment of etiologic agents). The select agents listed in 42 CFR 72, Appendix A, include both infectious agents and biological toxins. In addition, the select agents include bacteria, rickettsiae, and fungi, and appear to be far more comprehensive. Does this drafting decision comport with your intent?

15 SECTION 3. 166.02 (1r) of the statutes is created to read:

16 166.02 (1r) "Bioterrorism" means the intentional use of any biological agent  
17 to cause death, disease or biological malfunction in a human, animal, plant, or other

1 living organism in order to influence the policy of a governmental unit or to  
2 intimidate or coerce the civilian population.

\*\*\*\*NOTE: This language is based in part of <sup>on</sup>s. 939.648, which provides for a criminal  
penalty enhancer for terrorism, and in part on the model act.

3 SECTION 4. 166.02 (7) of the statutes is created to read:

4 166.02 (7) "Public health emergency" means the occurrence or imminent threat  
5 of an illness or health condition that meets all of the following criteria:

6 <sup>ca)</sup> ~~a.~~ Is believed to be caused by bioterrorism or a novel or previously controlled  
7 or eradicated biological agent.

8 <sup>cb)</sup> Poses a high probability of any of the following:

9 ~~a.~~ A large number of deaths or serious or long-term disabilities among humans.

10 <sup>b.</sup> A high probability of widespread exposure to a biological agent that creates  
11 a significant risk of substantial future harm to a large number of people.

12 SECTION 5. 166.03 (1) (b) 1. of the statutes is amended to read:

13 166.03 (1) (b) 1. Proclaim a state of emergency for the state or any portion  
14 thereof if he or she determines that an emergency resulting from enemy action or  
15 natural or man-made disaster exists. If the governor determines that a public  
16 health emergency exists, he or she may declare a state of emergency related to public  
17 health and may designate the department of health and family services as the lead  
18 public health authority to respond to that emergency. The duration of such state of  
19 emergency shall not exceed 60 days as to emergencies resulting from enemy action  
20 or 30 days as to emergencies resulting from natural or man-made disaster, unless  
21 either is extended by joint resolution of the legislature. A copy of the proclamation  
22 shall be filed with the secretary of state. The proclamation may be revoked at the

1 discretion of either the governor by written order or the legislature by joint  
2 resolution.

History: 1971 c. 211 s. 126; 1975 c. 147 s. 54; 1975 c. 199; 1977 c. 1; 1977 c. 397; 1979 c. 361 ss. 51, 55, 112, 113; 1981 c. 20, 211; 1983 a. 27; 1985 a. 29, 31; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 213, 251; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 247, 467; 1997 a. 27, 35, 237; 1999 a. 150 s. 672.

3 **SECTION 6. 166.03 (1) (b) 8. of the statutes is created to read:**

4 **166.03 (1) (b) 8. During a state of emergency related to public health, suspend**  
5 **the provisions of any administrative rule if the strict compliance with that rule would**  
6 **prevent, <sup>d</sup>hinder, or delay necessary actions to respond to the emergency and increase**  
7 **the health threat to the population.**

**2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4713/?rlrins  
RLR:.....

**1           Insert 3-12A:**

**2           (h) Notwithstanding s. 59.34 (1) or 59.35 (1), authorize a county medical**  
**3           examiner or a county coroner to appoint emergency assistant medical examiners or**  
**4           emergency deputy coroners, whichever is applicable, if necessary to perform the**  
**5           duties of the office of medical examiner or coroner, and to prescribe the duties of the**  
**6           emergency assistant medical examiners or emergency deputy coroners. The term of**  
**7           any emergency appointment authorized under this paragraph may not exceed the**  
**8           period of the state emergency. A county medical examiner or county coroner may**  
**9           terminate an emergency appointment before the end of the period of the state**  
**10          emergency, if termination of the appointment will not impede the performance of the**  
**11          duties of his or her office.**

\*\*\*\*NOTE: The bill does not specify whether the state or the county pays for the emergency assistants or deputies. Should it? The bill allows the department of health and family services to circumvent county government and directly authorize a county medical examiner or a county coroner to hire emergency staff. Should the authorization instead be directed at the county executive or county board? Should the department authorization include funding for the emergency staff?

**12**  
**13**  
**14           Insert 8-21:**

**15           SECTION 1. 895.46 (5) (c) of the statutes is created to read:**

**16           895.46 (5) (c) An emergency county medical examiner or an emergency county**  
**17          coroner appointed under the authority of s. 157.055 (2) (1).**

**18           SECTION 2. 979.012 of the statutes is created to read:**

**19           979.012 Reporting deaths of public health concern. (1) If a coroner or**  
**20          medical examiner is aware of the death of a person who, at the time of his or her**

1 death, had an illness or a health condition that satisfies s. 166.02 (7) (a), the coroner  
2 or medical examiner shall report the incidence of the illness or health condition to  
3 the department of health and family services in writing or by electronic transmission  
4 within 24 hours of learning of the deceased's illness or health condition.

5 (2) In a report under sub. (1), the coroner or medical examiner shall include all  
6 of the following information if such information is available :

7 (a) The illness or health condition <sup>of the</sup> ~~that the~~ deceased had.

8 (b) The name, date of birth, gender, race, occupation, and home and work  
9 addresses of the deceased.

10 (c) The name and address of the coroner or medical examiner ①

11 (d) If the illness or health condition was related to an animal or insect bite, the  
12 suspected location where the bite occurred and the name and address of the owner  
13 of the the animal or insect, if an owner is identified.

14

15



SOON - In edit 2/5  
State of Wisconsin  
2001 - 2002 LEGISLATURE

4715/1  
LRB-4719/1

DAK/RPN/RLR/MDK:hmh

D-NOTE

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1 AN ACT to renumber 95.22; to amend 166.03 (1) (b) 1., 252.02 (title), 252.02 (6),  
2 252.05 (1), 252.06 (1) and 252.06 (10) (a); to repeal and recreate 252.06 (4);  
3 and to create 20.435 (1) (e), 95.22 (2), 157.055, 166.02 (1p), 166.02 (1r), 166.02  
4 (7), 166.03 (1) (b) 8., 250.01 (6g), 250.01 (6r), 250.03 (3), 250.042, 251.05 (3) (e),  
5 252.02 (7), 252.041, 252.06 (10) (b) 5., 252.06 (10) (b) 6., 440.142, 895.46 (5) (c)  
6 and 979.012 of the statutes; relating to: authorizing a declaration of and  
7 actions under a state of emergency related to public health, requiring the  
8 exercise of rule-making authority, making an appropriation, and providing a  
9 penalty.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided on a subsequent version.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

Inserts  
RPN  
A



1 SECTION 1. 20.435 (1) (e) of the statutes is created to read:  
 2 20.435 (1) (e) *to defray all expenditures necessary* Public health emergency. A sum sufficient to respond to a state  
 3 of emergency related to public health only if the governor declares such an  
 4 emergency and designates the department of health and family services as the lead  
 5 *state agency* ~~public health authority~~ to respond to the emergency under s. 166.03 (1) (b) 1.

\*\*\*NOTE: Perhaps this language is too limiting. Should this appropriation account be available to the department of health and family services whenever the governor declares a state of emergency related to public health? Will that department need extra funds when such an emergency is declared, regardless of who is designated as the lead agency. As drafted, this appropriation account is available only when that state of emergency is declared and the governor designates the department of health and family services as the lead public health authority to respond to the emergency.

6 SECTION 2. 95.22 of the statutes is renumbered 95.22 (1).

7 SECTION 3. 95.22 (2) of the statutes is created to read:

8 95.22 (2) The department shall provide the reports of any communicable  
 9 diseases under sub. (1) to the department of health and family services, as requested  
 10 by that department.

\*\*\*NOTE: I drafted this as an ongoing requirement, you may, however, want it to apply only during the period of a state of emergency relating to public health. In addition, I required that DATCP share with DHFS only the information that DHFS asks for, to avoid flooding DHFS with information in which DHFS may have little interest.

11 SECTION 4. 157.055 of the statutes is created to read:

12 157.055 Disposal of human remains during state of emergency relating  
 13 to public health. (1) In this section:

14 (a) "Funeral establishment" has the meaning given in s. 445.01 (6).

15 (b) "Public health authority" has the meaning given in s. 250.01 (6g).

16 (2) Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3), (3m), and (4),  
 17 979.02, and 979.10, during a period of a state of emergency related to public health  
 18 declared by the governor under s. 166.03 (1) (b) 1., a public health authority may do  
 19 all of the following:

1 (a) Adopt and enforce measures that are reasonable and necessary to provide  
2 for the safe disposal of human remains, including by embalming, burial, cremation,  
3 interment, disinterment, transportation, and other disposal.

4 (b) Take possession and control of any human remains.

5 (c) Order the disposal, through burial or cremation, of any human remains of  
6 an individual who has died of a communicable disease, within 24 hours after the  
7 individual's death and consider, to the extent feasible, the religious, cultural, or  
8 individual beliefs of the deceased individual or his or her family in disposing of the  
9 remains.

10 (d) If reasonable and necessary for emergency response, compel a funeral  
11 establishment, as a condition of its permit under s. 445.105 (1), to accept human  
12 remains or provide the use of its business or facility, including by transferring the  
13 management and supervision of the funeral establishment to the public health  
14 authority for a period of time not to exceed the period of the state of emergency.

15 (e) If reasonable and necessary for emergency response, procure, by  
16 condemnation, any funeral establishment and take possession of it.

\*\*\*\*NOTE: Condemnation permanently transfers property to the state; assuming that the state of emergency is temporary, is condemnation appropriate for this circumstance, if DHFS already, under the draft, has the power to transfer the management and supervision of the funeral establishment to itself? Presumably, if condemnation is effected, the funeral establishment would require state employees to staff it; is that your intent? If it is your intent to permit condemnation, s. 32.22, stats., provides for an expedited procedure for blighted property. Would you want to make this procedure applicable to the condemnation of funeral establishments?

17 (e) Require the labeling of all human remains before disposal with all available  
18 identifying information and information concerning the circumstances of death and,  
19 in addition, require that the human remains of an individual with a communicable  
20 disease be clearly tagged to indicate that remains contain a communicable disease  
21 and, if known, the specific communicable disease.

f

1 (1) Maintain or require the maintenance of a written or electronic record of all  
2 human remains that are disposed of, including all available identifying information  
3 and information concerning the circumstances of death and disposal. If it is  
4 impossible to identify human remains prior to disposal, the public health authority  
5 may require that a qualified person obtain any fingerprints, photographs, or  
6 identifying dental information, and collect a specimen of deoxyribonucleic acid from  
7 the human remains and transmit this information to the public health authority.

8 g (2) Notwithstanding s. 59.34 (1) or 59.35 (1), authorize a county medical  
9 examiner or a county coroner to appoint emergency assistant medical examiners or  
10 emergency deputy coroners, whichever is applicable, if necessary to perform the  
11 duties of the office of medical examiner or coroner, and to proscribe the duties of the  
12 emergency assistant medical examiners or emergency deputy coroners. The term of  
13 any emergency appointment authorized under this paragraph may not exceed the  
14 period of the state emergency. A county medical examiner or county coroner may  
15 terminate an emergency appointment before the end of the period of the state  
16 emergency, if termination of the appointment will not impede the performance of the  
17 duties of his or her office.

\*\*\*\*NOTE: The bill does not specify whether the state or the county pays for the emergency assistants or deputies. Should it? The bill allows the department of health and family services to circumvent county government and directly authorize a county medical examiner or a county coroner to hire emergency staff. Should the authorization instead be directed at the county executive or county board? Should the department authorization include funding for the emergency staff?

18 SECTION 5. 166.02 (1p) of the statutes is created to read:

19 166.02 (1p) "Biological agent" means any of the following:

20 (a) A select agent that is a virus, bacterium, rickettsia, fungus, or toxin that is  
21 specified under 42 CFR 72, Appendix A.

From the appropriation under s. 20.435(1)(e), the department shall reimburse counties for the cost of any emergency medical examiners or emergency deputy coroners appointed under this paragraph.

1 (b) A genetically modified microorganism or genetic element from an organism  
2 under par. (a) that is shown to produce or encode for a factor associated with a  
3 disease.

4 (c) A genetically modified microorganism or genetic element that contains  
5 nucleic acid sequences coding for a toxin under par. (a) or its toxic subunit.

\*\*\*\*NOTE: The Model Act refers to "infectious agent" and "biological toxin" and defines neither of those terms. In contrast, this draft uses a definition of "biological agent" that is taken from the definition of "select agent" under 42 CFR 72.6 (j) (the federal rules that govern interstate shipment of etiologic agents). The select agents listed in 42 CFR 72, Appendix A, include both infectious agents and biological toxins. In addition, the select agents include bacteria, rickettsiae, and fungi, and appear to be far more comprehensive. Does this drafting decision comport with your intent?

6 **SECTION 6.** 166.02 (1r) of the statutes is created to read:

7 166.02 (1r) "Bioterrorism" means the intentional use of any biological agent  
8 to cause death, disease, or biological malfunction in a human, animal, plant, or other  
9 living organism in order to influence the policy of a governmental unit or to  
10 intimidate or coerce the civilian population.

\*\*\*\*NOTE: This language is based in part on s. 939.648, which provides for a criminal penalty enhancer for terrorism, and in part on the model act.

11 **SECTION 7.** 166.02 (7) of the statutes is created to read:

12 166.02 (7) "Public health emergency" means the occurrence or imminent threat  
13 of an illness or health condition that meets all of the following criteria:

14 (a) Is believed to be caused by bioterrorism or a novel or previously controlled  
15 or eradicated biological agent.

16 (b) Poses a high probability of any of the following:

- 17 1. A large number of deaths or serious or long term disabilities among humans.  
18 2. A high probability of widespread exposure to a biological agent that creates  
19 a significant risk of substantial future harm to a large number of people.

20 **SECTION 8.** 166.03 (1) (b) 1. of the statutes is amended to read:

1           166.03 (1) (b) 1. Proclaim a state of emergency for the state or any portion  
2           thereof of the state if he or she determines that an emergency resulting from enemy  
3           action or natural or man-made disaster exists. If the governor determines that a  
4           public health emergency exists, he or she may declare a state of emergency related  
5           to public health and may designate the department of health and family services as  
6           the lead ~~public health authority~~ <sup>state agency</sup> to respond to that emergency. The duration of such  
7           state of emergency shall not exceed 60 days as to emergencies resulting from enemy  
8           action or 30 days as to emergencies resulting from natural or man-made disaster,  
9           unless either is extended by joint resolution of the legislature. A copy of the  
10          proclamation shall be filed with the secretary of state. The proclamation may be  
11          revoked at the discretion of either the governor by written order or the legislature  
12          by joint resolution.

13           **SECTION 9.** 166.03 (1) (b) 8. of the statutes is created to read:

14           166.03 (1) (b) 8. During a state of emergency related to public health, suspend  
15           the provisions of any administrative rule if the strict compliance with that rule would  
16           prevent, hinder, or delay necessary actions to respond to the emergency and increase  
17           the health threat to the population.

18           **SECTION 10.** 250.01 (6g) of the statutes is created to read:

19           250.01 (6g) "Public health authority" means the department, if the governor  
20           declares under s. 166.03 (1) (b) 1. a state of emergency related to public health and  
21           designates the department as the lead ~~public health authority~~ <sup>state agency</sup> to respond to that  
22           emergency.

23           **SECTION 11.** 250.01 (6r) of the statutes is created to read:

24           250.01 (6r) "Public health emergency" has the meaning given in s. 166.02 (7).

25           **SECTION 12.** 250.03 (3) of the statutes is created to read:

1           250.03 (3) Biennially, beginning on July 1, 2002, after first consulting with the  
2 adjutant general, local health departments, health care providers, as defined in s.  
3 146.81 (1), and law enforcement agencies, as defined in s. 165.77 (1) (b), the  
4 department shall submit to the legislature under s. 13.172 (2) and to the governor  
5 a report on the preparedness of the public health system to address public health  
6 emergencies.

7           **SECTION 13.** 250.042 of the statutes is created to read:

8           **250.042 Powers and duties of the department as public health**  
9 **authority.** (1) If the governor declares a state of emergency related to public health  
10 under s. 166.03 (1) (b) 1. and designates the department as the lead ~~public health~~  
11 ~~authority~~, the department shall act as the public health authority during the period  
12 of the state of emergency. During the period of the state of emergency, the secretary  
13 may designate a local health department as an agent of the department and confer  
14 upon the local health department, acting under that agency, the powers and duties  
15 of the public health authority.

16           (2) As the public health authority, the department may do any of the following:

17           (a) From the appropriation under s. 20.435 (1) (e), purchase, store, or distribute  
18 antitoxins, serums, vaccines, immunizing agents, antibiotics, and other  
19 pharmaceutical agents or medical supplies that the department determines are  
20 advisable to control a public health emergency.

\*\*\*NOTE: In this paragraph, I did not include language from the Model Act that permits the public health authority to purchase and distribute these materials in order to prepare for a public health emergency. I also did not include language from the Model Act that allows the public health authority to take and distribute antitoxins, serums, etc., during a state of emergency relating to public health; does this latter drafting decision comport with your intent?

21           (b) Act as specified in s. 252.041.

1 (3) (a) As the public health authority, the department shall inform state  
2 residents of all of the following:

3 1. When a state of emergency related to public health has been declared or is  
4 terminated.

5 2. How to protect themselves from a public health emergency.

6 3. What actions the public health authority is taking to control a public health  
7 emergency.

8 (b) The public health authority shall provide the information specified in par.  
9 (a) by all available and reasonable means calculated to inform the general public,  
10 including reasonable efforts to make the information accessible to individuals with  
11 disabilities and to provide the information in the primary languages of individuals  
12 who do not understand English.

13 SECTION 14. 251.05 (3) (e) of the statutes is created to read:

14 251.05 (3) (e) Act as agent of the department, if designated by the secretary  
15 under s. 250.042 (1).

16 SECTION 15. 252.02 (title) of the statutes is amended to read:

17 252.02 (title) **Powers and duties of department.**

18 SECTION 16. 252.02 (6) of the statutes is amended to read:

19 252.02 (6) The In addition to the powers specified under s. 250.042, the  
20 department may authorize and implement all emergency measures necessary to  
21 control communicable diseases.

\*\*\*NOTE: Do you wish to keep the broad (but vague and unspecified) powers of the  
department as they are under current law in this subsection?

22 SECTION 17. 252.02 (7) of the statutes is created to read:

1 252.02 (7) The department shall promulgate rules that specify medical  
2 conditions treatable by prescriptions or nonprescription drug products for which  
3 pharmacists and pharmacies must report under s. 440.142 (1).

4 SECTION 18. 252.041 of the statutes is created to read:

5 **252.041 Compulsory vaccination during a state of emergency.** During  
6 *of a state of emergency related to public health*  
7 *lead state agency* the period under which the department is authorized to act as the ~~public health~~  
8 ~~authority~~ as specified in s. 250.042 (2), the department, ~~as the public health~~  
9 ~~authority~~ may do all of the following as necessary to address a public health  
10 emergency:

11 (1) Authorize and order any qualified person to perform a vaccination on any  
12 individual unless the vaccination is reasonably likely to lead to serious harm to the  
13 individual.

14 (2) Isolate or quarantine, under s. 252.06, any individual who is unable or  
15 unwilling for reasons of health, religion, or conscience to receive vaccination under  
16 sub. (1).

17 SECTION 19. 252.05 (1) of the statutes is amended to read:

18 252.05 (1) ~~Any person licensed, permitted, registered or certified under ch. 441~~  
19 ~~or 448 knowing or having health care provider, as defined in s. 146.81 (1), who knows~~  
20 ~~or has~~ reason to know that a person treated or visited by him or her has a  
21 communicable disease, or having a communicable disease, has died, shall report the  
22 appearance of the communicable disease or the death to the local health officer. The  
23 local health officer shall report this information to the department or shall direct the  
24 person reporting to report to the department. Any person directed to report shall  
25 submit this information to the department.

SECTION 20. 252.06 (1) of the statutes is amended to read:



1 252.06 (1) The department or the local health officer acting on behalf of the  
2 department may require isolation of ~~the a~~ patient or of an individual under s. 252.041  
3 (2), quarantine of contacts, concurrent and terminal disinfection, or modified forms  
4 of these procedures as may be necessary and which are as determined by the  
5 department by rule.

*If s. 250.042 (1) applies,*

*If s. 250.042 (1) does not apply, no person, other than a person*

6 SECTION 21. 252.06 (4) of the statutes is repealed and recreated to read:

7 252.06 (4) (a) 1. No person, other than a person authorized by the public health  
8 authority or agent of the public health authority, may enter an isolation or  
9 quarantine premises.

*authorized by the local health department may enter an isolation or quarantine premises*

10 2. A violation of subd. 1. is subject to a fine not to exceed ~~\$10,000~~ or  
11 imprisonment not to exceed ~~12 months~~ or both.

*\$10,000*

*9 months*

\*\*\*\*NOTE: The Model Act specifies that a violation of this prohibition is punishable by a misdemeanor, but does not specify the punishment. Of the penalties for misdemeanors under s. 939.51, stats., which class (A, B, or C) would you like to have applied?

*under par. (a) 1.*

12 (b) Any person, whether authorized by a public health authority or agent of a  
13 public health authority or not, who enters an isolation or quarantine premises may  
14 be subject to quarantine or isolation under this section.

*or quarantine*

15 SECTION 22. 252.06 (10) (a) of the statutes is amended to read:

16 252.06 (10) (a) Expenses Except as provided in par. (b) 5., expenses for  
17 necessary medical care, food, and other articles needed for the care and treatment  
18 of the infected person shall be charged against the person or whoever is liable for the  
19 person's support.

20 SECTION 23. 252.06 (10) (b) 5. of the statutes is created to read:

21 252.06 (10) (b) 5. If a person is quarantined or isolated in a place that is not the  
22 residence of the person or of an immediate family member of the person, the expenses

1 of necessary medical care, food, and other articles needed for the care and treatment  
2 of the person.

3 SECTION 24. 252.06 (10) (b) 6. of the statutes is created to read:

4 252.06 (10) (b) 6. The expense of providing a reasonable means of  
5 communication for the person.

6 SECTION 25. 440.142 of the statutes is created to read:

7 **440.142 Reporting potential causes of public health emergency.** A  
8 pharmacist or pharmacy shall report to the department of health and family services  
9 all of the following:

10 (1) An unusual increase in the number of prescriptions dispensed or  
11 nonprescription drug products sold for the treatment of medical conditions specified  
12 by the department of health and family services by rule under s. 252.02 (7).

13 (2) An unusual increase in the number of prescriptions dispensed that are  
14 antibiotic drugs.

15 (3) The dispensing of a prescription for treatment of a disease that is relatively  
16 uncommon or may be associated with bioterrorism, as defined in s. 166.02 (1r).

17 SECTION 26. 895.46 (5) (c) of the statutes is created to read:

18 895.46 (5) (c) An emergency county medical examiner or an emergency county  
19 coroner appointed under the authority of s. 157.055 (2) (h).

20 SECTION 27. 979.012 of the statutes is created to read:

21 **979.012 Reporting deaths of public health concern.** (1) If a coroner or  
22 medical examiner is aware of the death of a person who, at the time of his or her  
23 death, had an illness or a health condition that satisfies s. 166.02 (7) (a), the coroner  
24 or medical examiner shall report the incidence of the illness or health condition to

1 the department of health and family services in writing or by electronic transmission  
2 within 24 hours of learning of the deceased's illness or health condition.

3 (2) In a report under sub. (1), the coroner or medical examiner shall include all  
4 of the following information if such information is available: ~~-----~~

5 (a) The illness or health condition of the deceased.

6 (b) The name, date of birth, gender, race, occupation, and home and work  
7 addresses of the deceased.

8 (c) The name and address of the coroner or medical examiner.

9 (d) If the illness or health condition was related to an animal or insect bite, the  
10 suspected location where the bite occurred and the name and address of the owner  
11 of the the animal or insect, if an owner is identified.

#### 12 **SECTION 28. Nonstatutory provisions.**

13 (1) **MEDICAL CONDITIONS FOR WHICH PHARMACEUTICAL DRUGS ARE DISPENSED OR**  
14 **SOLD; RULES.** (a) The department of health and family services shall submit in  
15 proposed form the rules required under section 252.02 (7) of the statutes, as created  
16 by this act, to the legislative council staff under section 227.15 (1) of the statutes no  
17 later than the first day of the 6th month beginning after the effective date of this  
18 subsection.

19 (b) Using the procedure under section 227.24 of the statutes, the department  
20 of health and family services may promulgate rules required under section 252.02  
21 (7) of the statutes, as created by this act, for the period before the effective date of the  
22 rules submitted under paragraph (a), but not to exceed the period authorized under  
23 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a),  
24 (2) (b) and (3) of the statutes, the department of health and family services is not  
25 required to provide evidence that promulgating a rule under this paragraph as an

1 emergency rule is necessary for the preservation of the public peace, health, safety,  
2 or welfare and is not required to provide a finding of emergency for a rule  
3 promulgated under this paragraph.

4 **SECTION 29. Effective dates.** This act takes effect on the day after publication,  
5 except as follows:

6 (1) MEDICAL CONDITIONS FOR WHICH PHARMACEUTICAL DRUGS ARE DISPENSED OR  
7 SOLD; RULES. The treatment of section 440.142 (1) of the statutes takes effect on the  
8 first day of the fifth month beginning after publication.

9 (END)

D - NOTE

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4713/lrnins  
RPN:hmh:jf

*Insert RPN*

*Declaration of a emergency related to public health*

(DHS)

Under current law, the governor may proclaim a state of emergency for any portion of the state or the whole state if the governor determines that an emergency resulting from enemy action or a natural or man-made disaster exists. The state of emergency may not exceed 60 days for an emergency resulting from enemy action or 30 days from disasters, unless extended by a joint resolution of the legislature. The department of military affairs, through the division of emergency government, is the lead agency to respond to the emergency. This bill allows the governor to proclaim a state of emergency related to public health and designate the department of health and family services as the lead agency if the governor determines that a public health emergency exists. The bill defines a public health emergency as the occurrence or threat of a health condition that is caused by bioterrorism or a novel or previously controlled biological agent and that poses a high probability of a large number of deaths or serious injury and a high probability of widespread exposure to a biological agent that creates a significant risk of harm to a large number of people. Under the bill, during a state of emergency related to public health, the governor may suspend any administrative rule that would hinder necessary actions to respond to the emergency and increase the health threat to the population.

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4713/lins  
DAK/RPN/RLR/MDK:hmh:jf

INSERT A

Current law relating to the duties of funeral directors prohibits a public officer, an employee or officer of a public institution, or a physician from sending the corpse of a person to a funeral director without having first made inquiry as to the desires of the next of kin or others who may be chargeable with the funeral expenses. No person who is not licensed as a funeral director by the funeral directors examining board may engage in the business of a funeral director. **INSERT RLR 1**

Under current law, DHFS must carry out a statewide immunization program to eliminate mumps, measles, German measles, diphtheria, whooping cough, poliomyelitis and other diseases that DHFS specifies by rule and to protect against tetanus. Any registered nurse, licensed practical nurse, nurse midwife, physician, physician assistant, respirator care practitioner, physician therapist, podiatrist, dietitian, athletic trainer, or occupational therapist who knows or has reason to know that a person treated or visited by him or her has a communicable disease or, having a communicable disease, has died, must report the appearance of the disease or the death to the local health officer; the local health officer must report, or require the person reporting, to report to DHFS. DHFS has broad authority to implement emergency measures necessary to control communicable diseases, ~~which~~ <sup>that</sup> are diseases specified by DHFS by rule. DHFS or local health officers of local health departments may require isolation of a patient, quarantine of contacts, disinfection, or modified forms of these procedures. If a local health officer has a reasonable belief in the existence of a communicable disease or receives a diagnostic report of a physician or notification or a confirming report from a parent or caretaker, the local health officer must immediately quarantine, isolate, and impose restrictions on persons or take other communicable disease control measures. If DHFS or a local health officer determines it necessary for a particular communicable disease, no persons except the local health officer, his or her representative, the attending physicians and nurses, members of the clergy, members of a patient's immediate family, and other persons with a special permit from the local health officer may be in direct contact with the patient. Expenses for necessary medical care, food, and other articles necessary for the care of an infected person must be charged to the person or whoever is liable for his or her support.

This bill requires DHFS to act as the public health authority during the period of a state of emergency related to public health, if the governor declares the state of emergency and designates the department as the lead state agency. During the state of emergency, the secretary of DHFS may designate a local health department as an agent of DHFS and confer upon the local health department, acting under that agency, the powers and duties of the public health authority.

Under the bill, as the public health authority, DHFS must inform state residents when a state of emergency related to public health has been declared or is terminated, how to protect themselves, and what actions the public health authority is taking to control a public health emergency. This information must be provided by all available and reasonable means calculated to inform the general public. From

a sum sufficient appropriation of general purpose revenues created in the bill, DHFS may purchase, store, or distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies that DHFS determines are advisable to control a public health emergency. DHFS also may authorize and order any qualified person to perform vaccinations on any individuals unless a vaccination is reasonably likely to lead to serious harm to the individual, and may isolate or quarantine any individual who is unable or unwilling for reasons of health, religion, or conscience to receive the vaccination. Further, the bill changes provisions relating to visitation during isolation or quarantine to establish a penalty for any person, other than a person authorized by the local health department, or, during a state of emergency related to public health, authorized by the public health authority or agent of the public health authority, who enters an isolation or quarantine premises. In addition, a person, whether authorized or not, who enters an isolation or quarantine premises may be subject to quarantine or isolation. A county or municipality is made liable for the expense of providing a reasonable means of communication for a person who is isolated or quarantined and for expenses for necessary medical care, food, and other articles need<sup>ed</sup> for the care and treatment of an infected person who is quarantined or isolated in a place other than his or her residence or a family member's residence, unless third-party payment is available for these expenses. All health care providers who know or have reason to know that a person treated or visited by them has a communicable disease, or, having a communicable disease, has died, must report the communicable disease or death to the local health officer.

The bill also permits a public health authority, during a period of a state of emergency relating to public health, to do all of the following:

1. Adopt and enforce measures that are reasonable and necessary to provide for the safe disposal of human remains, including by embalming, burial, cremation, interment, disinterment, transportation, and other disposal.
2. Take possession and control of any human remains.
3. Order the disposal, through burial or cremation, of any human remains of an individual who has died of a communicable disease, within 24 hours after the individual's death.
4. If reasonable and necessary for emergency response, compel a funeral establishment, as a condition of its permit, to accept human remains or provide the use of its business to the public health authority for the period of the state of emergency.
5. Require the labeling of all human remains before disposal with all available identifying information and information concerning the circumstances of death, and require the tagging of the human remains of an individual with a communicable disease.
6. Maintain or require maintenance of a written or electronic record of all human remains that are disposed of and, if it is impossible to identify the human remains, require that fingerprints, photographs, or identifying dental information be obtained and a specimen of deoxyribonucleic acid be collected.

INS RLR 2 →

The bill requires a pharmacist or pharmacy to report to DHFS all of the following:

1. An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions, as specified by DHFS by rule.
2. An unusual increase in the number of antibiotic drug prescriptions dispensed.

INSERT  
RLR 3

3. Prescriptions dispensed for treatment of a disease that is relatively uncommon or may be associated with bioterrorism.

Lastly, beginning on July 1, 2002, after first consulting with the adjutant general, local health departments, health care providers, and law enforcement agencies, the bill requires DHFS to report biennially to the governor and to the legislature on the preparedness of the public health system to address public health emergencies.

FE-S/L



**2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4713/lrlrins  
RLR:.....

**Insert RLR 1:**

**NO ¶**  
Further, no person may cremate a corpse without first obtaining a cremation permit from the appropriate county coroner or medical examiner. If a corpse is the subject of a coroner's or medical examiner's investigation concerning cause of death, no person may embalm or conduct an autopsy on the corpse without authorization from the appropriate coroner or medical examiner.

**Insert RLR 2:**

7. Authorize a county medical examiner or county coroner to appoint assistants or deputies, if necessary to perform the duties of the medical examiner or the coroner.

**Insert RLR 3:**

The bill also requires a coroner or medical examiner to report to DHFS any illness or health condition of a deceased that is caused by bioterrorism or by a novel or previously controlled or eradicated biological agent.

D-NOTE

I have expanded s. 252.06 (4) (a) 1. <sup>(and (b),</sup> because there may be instances of quarantine or isolation that occur during a period that is not a state of emergency related to public health. Okay?

DAK

In response to your question regarding a sum sufficient, under s. 20.465 (c) (c), the department of military affairs does have a sum sufficient to cover all expenses arising from an emergency. This bill gives DHS the same type of appropriation when DHS is the lead <sup>state</sup> agency responding to a public health emergency. We cannot give the governor authority to transfer money from a sum sufficient because of the nature of sum sufficient. Jeff Huesel, our appropriations expert, says that creating a separate sum sufficient is the only way to do this. DHS, as an executive agency, is subject to DOT and the governor's oversight.

RPN

**Kennedy, Debora**

---

**From:** Sweet, Richard  
**Sent:** Friday, February 01, 2002 3:11 PM  
**To:** Kennedy, Debora; Nelson, Robert P.  
**Cc:** Loneragan, Sandra; Grapentine, Mark  
**Subject:** LRB-4713/P1

**Debora/Bob:**

I met with Mark and Sandy regarding LRB-4713/P1 and they wanted to request the following in drafting /1:

- ✓ 1. Page 2, lines 8 to 10 are okay as is.
- ✓ 2. Page 3, lines 15 and 16 would be deleted.
- ✓ 3. Page 4, lines 8 to 17. They want to bypass the county officials, but they want to have the state pay. If the sum sufficient is retained, it should come from there. However, we had questions about why there was a sum sufficient in the draft. The original thought was that the Governor would be able to transfer funds from DMA to DHFS if there is a public health emergency (item 17 in the 12/21 e-mail). Does DMA have a sum sufficient for addressing emergencies?
- ✓ 4. Page 6, lines 6 and 21, page 7, line 10, page 2, line 4--"lead public health authority" would be changed to "lead state agency".
- ✓ 5. Page 7, lines 17 to 20 are okay as is.
- ✓ 6. Page 8, lines 19 to 21 are okay as is.
- ✓ 7. Page 10, line 10--class A misdemeanor.
- ✓ 8. Page 11, line 24--"the incidence of" would be deleted.

Thanks for your help.

*Dick Sweet*  
Senior Staff Attorney  
Wisconsin Legislative Council  
(608)266-2982  
richard.sweet@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4715/1dn  
DAK/RPN:hmh:ch

February 7, 2002

I have expanded s. 252.06 (4) (a) 1. and (b), because there may be instances of quarantine or isolation that occur during a period that is not a state of emergency related to public health. Okay?

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In response to your question regarding a sum sufficient, under s. 20.465 (1) (c), the department of military affairs does have a sum sufficient to cover all expenses arising from an emergency. This bill gives DHFS the same type of appropriation when DHFS is the lead state agency responding to a public health emergency. We cannot give the governor authority to transfer money from a sum sufficient because of the nature of sum sufficient. Jeff Kuesel, our appropriations expert, says that creating a separate sum sufficient is the only way to do this. DHFS, as an executive agency, is subject to DOA and the governor's oversight.

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**Kennedy, Debora**

**From:** Buschman, Sara  
**Sent:** Friday, February 15, 2002 3:18 PM  
**To:** Kennedy, Debora  
**Subject:** FW: Public health preparedness

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-----Original Message-----

**From:** Sweet, Richard  
**Sent:** Friday, February 15, 2002 2:05 PM  
**To:** Buschman, Sara; Lonergan, Sandra; Grapentine, Mark  
**Subject:** Public health preparedness

I'm writing this as a follow-up to our meeting this morning and a subsequent conversation I had with Dan Stier of DHFS. The 2 drafts would be changed as follows:

- DAK ✓ 1. LRB4715--page 5, lines 6 and 7, delete ", as requested by that department". Same change in LRB4806, page 7, lines 1 and 2. *how much*
- RPN ✓ 2. The definition of "bioterrorism" in both drafts would be expanded to include chemical agents and radiological agents. "Chemical agent" would be defined as "a solid, liquid, or gas that has chemical properties that produce lethal or serious effects in plants and animals" "Radiological agent" would be defined as "radiation or radioactive material at a level that is dangerous to human health". *From Dan Stier DHFS 6-1404*
- DAK ✓ 3. LRB4715--page 11, lines 6 to 8 should read: "(1) Order any individual to receive a vaccination unless the vaccination is reasonably likely to lead to serious harm to the individual or the individual, for reasons of religion or conscience, refuses to obtain the vaccination." On line 10, "specified under sub. (1)" could be substituted for "of health, religion or conscience". LRB4806, page 10, line 23 to page 11, line 11, delete that material and substitute the same language as in LRB4715.
- DAK ✓ 4. LRB4715, page 12, line 3--keep current law on who may enter a quarantine/isolation area, but make it a par. (a) and add "Except as provided in par. (b)". Par. (b) would then be the language from lines 4 to 13, minus the sentence beginning on line 6. Thus, par. (b) would apply in public health emergencies and par. (a) would apply the rest of the time. Same language in LRB4806, page 11, line 22 to page 12, line 4 (and you need to add "and providing a penalty" in the relating clause).
- RPN ✓ DAK 5. LRB4806, SECTION 20--add this provision to LRB4715. In both drafts, specify that if the Governor declares a public health emergency, but doesn't designate DHFS as the lead state agency, the Division of Emergency Management would have to submit the required report. *RPN 2*
- DAK ✓ 6. LRB4715, page 10, lines 16 to 19--delete the change to 252.02(6). Same change in LRB4806, page 10, lines 9 to 12.

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