

MODEL STATE EMERGENCY HEALTH POWERS ACT

Draft as of December 21, 2001

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PREAMBLE

In the wake of the tragic events of September 11, 2001, our nation realizes that the government's foremost responsibility is to protect the health, safety, and well being of its citizens. New and emerging dangers including emergent and resurgent infectious diseases and incidents of civilian mass casualties pose serious and immediate threats to the population. A renewed focus on the prevention, detection, management, and containment of public health emergencies is thus called for.

Emergency health threats, including those caused by bioterrorism and epidemics, require the exercise of essential government functions. Because each state is responsible for safeguarding the health, security, and well being of its people, state and local governments must be able to respond, rapidly and effectively, to public health emergencies. The Model State Emergency Health Powers Act (the "Act") therefore grants specific emergency powers to state governors and public health authorities.

The Act requires the development of a comprehensive plan to provide a coordinated, appropriate response in the event of a public health emergency. It facilitates the early detection of a health emergency by authorizing the reporting and collection of data and records, and allows for immediate investigation by granting access to individuals' health information under specified circumstances. During a public health emergency, state and local officials are authorized to use and appropriate property as necessary for the care, treatment, and housing of patients, and to destroy contaminated facilities or materials. They are also empowered to provide care, testing and treatment, and vaccination to persons who are ill or who have been exposed to a contagious disease, and to separate affected individuals from the population at large to interrupt disease transmission.

At the same time, the Act recognizes that a state's ability to respond to a public health emergency must respect the dignity and rights of persons. The exercise of emergency health powers is designed to promote the common good. Emergency powers must be grounded in a thorough scientific understanding of public health threats and disease transmission. Guided by principles of justice, state and local governments have a duty to act with fairness and tolerance towards individuals and groups. The Act thus provides that, in the event of the exercise of emergency powers, the civil rights, liberties, and needs of infected or exposed persons will be protected to the fullest extent possible consistent with the primary goal of controlling serious health threats.

Public health laws and our courts have traditionally balanced the common good with individual civil liberties. As Justice Harlan wrote in the seminal United States Supreme Court case of *Jacobson v. Massachusetts*, "the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the 'common good.'" The Act strikes such a balance. It provides state and local officials with the ability to prevent,

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detect, manage, and contain emergency health threats without unduly interfering with civil rights and liberties. The Act seeks to ensure a strong, effective, and timely response to public health emergencies, while fostering respect for individuals from all groups and backgrounds.

Although modernizing public health law is an important part of protecting the population during public health emergencies, the public health system itself needs improvement. Preparing for a public health emergency requires a well trained public health workforce, efficient data systems, and sufficient laboratory capacity.

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ARTICLE I TITLE, FINDINGS, PURPOSES, AND DEFINITIONS

Section 101 Short title. This Act may be cited as the "Model State Emergency Health Powers Act."

Section 102 Legislative findings. The [state legislature] finds that

- (a) The government must do more to protect the health, safety, and general well being of its citizens.
- (b) New and emerging dangers including emergent and resurgent infectious diseases and incidents of civilian mass casualties pose serious and immediate threats.
- (c) A renewed focus on the prevention, detection, management, and containment of public health emergencies is needed.
- (d) Emergency health threats, including those caused by bioterrorism may require the exercise of extraordinary government powers and functions.
- (e) This State must have the ability to respond, rapidly and effectively, to potential or actual public health emergencies.
- (f) The exercise of emergency health powers must promote the common good.
- (g) Emergency health powers must be grounded in a thorough scientific understanding of public health threats and disease transmission.
- (h) Guided by principles of justice and antidiscrimination, it is the duty of this State to act with fairness and tolerance towards individuals and groups.
- (i) The rights of people to liberty, bodily integrity, and privacy must be respected to the fullest extent possible consistent with maintaining and preserving the public's health and security.
- (j) This Act is necessary to protect the health and safety of the citizens of this State.

Section 103 Purposes. The purposes of this Act are

- (a) To require the development of a comprehensive plan to provide for a coordinated, appropriate response in the event of a public health emergency.
- (b) To authorize the reporting and collection of data and records, the management of property, the protection of persons, and access to communications.
- (c) To facilitate the early detection of a health emergency, and allow for immediate investigation of such an emergency by granting access to individuals' health information under specified circumstances.
- (d) To grant State and local officials the authority to use and appropriate property as necessary for the care, treatment, vaccination, and housing of patients, and to destroy contaminated facilities or materials.

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- (e) To grant State and local officials the authority to provide care, treatment, and vaccination to persons who are ill or who have been exposed to contagious diseases, and to separate affected individuals from the population at large to interrupt disease transmission.
- (f) To ensure that the needs of infected or exposed persons are properly addressed to the fullest extent possible, given the primary goal of controlling serious health threats.
- (g) To provide State and local officials with the ability to prevent, detect, manage, and contain emergency health threats without unduly interfering with civil rights and liberties.

Section 104 Definitions.

- (a) **"Bioterrorism"** is the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population.
- (b) **"Chain of custody"** is the methodology of tracking specimens for the purpose of maintaining control and accountability from initial collection to final disposition of the specimens and providing for accountability at each stage of collecting, handling, testing, storing, and transporting the specimens and reporting test results.
- (c) **"Contagious disease"** is an infectious disease that can be transmitted from person to person.
- (d) **"Health care facility"** means any non-federal institution, building, or agency or portion thereof, whether public or private (for-profit or nonprofit) that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. This includes, but is not limited to: ambulatory surgical facilities, home health agencies, hospices, hospitals, infirmaries, intermediate care facilities, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatments facilities, skilled nursing facilities, and adult day-care centers. This also includes, but is not limited to, the following related property when used for or in connection with the foregoing: laboratories; research facilities; pharmacies; laundry facilities; health personnel training and lodging facilities; patient, guest, and health personnel food service facilities; and offices and office buildings for persons engaged in health care professions or services.

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- (e) **"Health care provider"** is any person or entity who provides health care services including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician assistants, nurse practitioners, registered and other nurses, paramedics, emergency medical or laboratory technicians, and ambulance and emergency medical workers.
- (f) **"Infectious disease"** is a disease caused by a living organism or other pathogen, including a fungus, bacillus, parasite, protozoan, or virus. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.
- (g) **"Infectious waste"** is
- (i) **"biological waste,"** which includes blood and blood products, excretions, exudates, secretions, suctioning and other body fluids, and waste materials saturated with blood or body fluids;
 - (ii) **"cultures and stocks,"** which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures, wastes from production of biologicals and serums, and discarded live and attenuated vaccines;
 - (iii) **"pathological waste,"** which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, necropsy or autopsy and laboratory procedures, and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals, but does not include teeth or formaldehyde or other preservative agents; and
 - (iv) **"sharps,"** which includes needles, I.V. tubing with needles attached, scalpel blades, lancets, breakable glass tubes, and syringes that have been removed from their original sterile containers.
- (h) **"Isolation"** is the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals.
- (i) **"Mental health support personnel"** includes, but is not limited to, psychiatrists, psychologists, social workers, and volunteer crisis counseling groups.
- (j) **"Organized militia"** includes the State National Guard, the army national guard, the air national guard, or any other military force organized under the laws of this state.
- (k) **"Protected health information"** is any information, whether oral, written, electronic, visual, or any other form, that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and that reveals the identity of the individual whose health care is the subject of the information, or where there is a reasonable basis to believe such information could be utilized (either alone or with other

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information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

- (l) **“Public health authority”** is the *[insert the title of the state’s primary public health agency, department, division, or bureau]*; or any local government agency that acts principally to protect or preserve the public’s health; or any person directly authorized to act on behalf of the *[insert the title of the state’s primary public health agency, department, division, or bureau]* or local public health agency.
- (m) A **“public health emergency”** is an occurrence of imminent threat of an illness or health condition that:
- (1) is believed to be caused by any of the following:
 - (i) bioterrorism;
 - (ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin;
 - (iii) *[a natural disaster;]*
 - (iv) *[a chemical attack or accidental release; or]*
 - (v) *[a nuclear attack or accident]*; and
 - (2) poses a high probability of any of the following harms:
 - (i) a large number of deaths in the affected population;
 - (ii) a large number of serious or long-term disabilities in the affected population; or
 - (iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.
- (n) **“Public safety authority”** means the *[insert the title of the state’s primary public safety agency, department, division, or bureau]*; or any local government agency that acts principally to protect or preserve the public safety; or any person directly authorized to act on behalf of the *[insert the title of the state’s primary public safety agency, department, division, or bureau]* or local agency.
- (o) **“Quarantine”** is the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit the transmission of the disease to non-quarantined individuals.
- (p) **“Specimens”** include, but are not limited to, blood, sputum, urine, stool, other bodily fluids, wastes, tissues, and cultures necessary to perform required tests.
- (q) **“Tests”** include, but are not limited to, any diagnostic or investigative analyses necessary to prevent the spread of disease or protect the public’s health, safety, and welfare.
- (r) **“Trial court”** is the trial court for the district in which isolation or quarantine is to occur, a court designated by the Public Health Emergency Plan under Article II

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of this Act, or to the trial court for the district in which a public health emergency has been declared.

Legislative History. The definition for “bioterrorism” was adapted from its definition in 18 U.S.C.A. § 178 (West 2000) and from definitions used by the General Accounting Office. The definitions of “chain of custody,” “specimens,” and “tests” were adapted from ALA. CODE § 25-5-331 (2000). The definition of “health care facility” was adapted from ARK. CODE ANN. § 20-13-901 (Michie 2000); CAL. BUS. & PROF. CODE § 4027 (West 2001); FLA. STAT. ANN. § 159.27 (West 2000). The definition of “health care provider” was adapted from OKLA. STAT. ANN. tit. 74, § 1304 (West 2001). The definition of “infectious waste” was adapted from OR. REV. STAT. § 459.386 (1999). The definition for “organized militia” was adapted from NY CLS MILITARY § 1 (2001), MISS CODE ANN § 33-1-1 (2001), O.C.G.A. § 38-2-2 (2000), and CONN. GEN. STAT. § 27-141 (2001). The definitions of “public health authority” and “protected health information” were adapted from LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999. The definition of a “public health emergency” was adapted from COLO. REV. STAT. ANN. § 24-32-2103(1.5) (West 2001).

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ARTICLE II PLANNING FOR A PUBLIC HEALTH EMERGENCY

Section 201 Public Health Emergency Planning Commission. The Governor shall appoint a Public Health Emergency Planning Commission ("the Commission"), consisting of the State directors, or their designees, of agencies the Governor deems relevant to public health emergency preparedness, a representative group of state legislators, members of the judiciary, and any other persons chosen by the Governor. The Governor shall also designate the chair of the Commission.

Legislative History. Section 201 is adapted from COLO. REV. STAT. ANN. § 24-32-2104 (West 2001); 2001 ILL. LAWS 73(5).

Section 202 Public Health Emergency Plan.

- (a) **Content.** The Commission shall, within six months of its appointment, deliver to the Governor a plan for responding to a public health emergency, that includes provisions or guidelines on the following:
- (1) Notifying and communicating with the population during a state of public health emergency in compliance with this Act;
 - (2) Central coordination of resources, manpower, and services, including coordination of responses by State, local, tribal, and federal agencies;
 - (3) The location, procurement, storage, transportation, maintenance, and distribution of essential materials, including but not limited to medical supplies, drugs, vaccines, food, shelter, clothing and beds;
 - (4) Compliance with the reporting requirements in Section 301;
 - (5) The continued, effective operation of the judicial system including, if deemed necessary, the identification and training of personnel to serve as emergency judges regarding matters of isolation and quarantine as described in this Act;
 - (6) The method of evacuating populations, and housing and feeding the evacuated populations;
 - (7) The identification and training of health care providers to diagnose and treat persons with infectious diseases;
 - (8) The vaccination of persons, in compliance with the provisions of this Act;
 - (9) The treatment of persons who have been exposed to or who are infected with diseases or health conditions that may be the cause of a public health emergency.
 - (10) The safe disposal of infectious wastes and human remains in compliance with the provisions of this Act;
 - (11) The safe and effective control of persons isolated, quarantined, vaccinated, tested, or treated during a state of public health emergency;

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- (12) Tracking the source and outcomes of infected persons;
- (13) Ensuring that each city and county within the State identifies the following
 - (i) sites where persons can be isolated or quarantined in compliance with the conditions and principles for isolation or quarantine of this Act;
 - (ii) sites where medical supplies, food, and other essentials can be distributed to the population;
 - (iii) sites where public health and emergency workers can be housed and fed; and
 - (iv) routes and means of transportation of people and materials;
- (14) Cultural norms, values, religious principles, and traditions that may be relevant; and
- (15) Other measures necessary to carry out the purposes of this Act.
- (b) **Distribution.** The Commission shall distribute this plan to those who will be responsible for its implementation, other interested persons, and the public, and seek their review and comments.
- (c) **Review.** The Commission shall annually review its plan for responding to a public health emergency.

Legislative History. Section 202 is adapted from COLO. REV. STAT. ANN. § 24-32-2104 (West 2001); 2001 ILL. LAWS 73(5).

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ARTICLE III MEASURES TO DETECT AND TRACK PUBLIC HEALTH EMERGENCIES

Section 301 Reporting.

- (a) **Illness or health condition.** A health care provider, coroner, or medical examiner shall report all cases of persons who harbor any illness or health condition that may be potential causes of a public health emergency. Reportable illnesses and health conditions include, but are not limited to, the diseases caused by the biological agents listed in 42 C.F.R. § 72, app. A (2000) and any illnesses or health conditions identified by the public health authority.
- (b) **Pharmacists.** In addition to the foregoing requirements for health care providers, a pharmacist shall report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be potential causes of a public health emergency. Prescription-related events that require a report include, but are not limited to a
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- (1) an unusual increase in the number of prescriptions or over-the-counter pharmaceuticals to treat conditions that the public health authority identifies through regulations;
 - (2) an unusual increase in the number of prescriptions for antibiotics; and
 - (3) any prescription that treats a disease that is relatively uncommon or may be associated with bioterrorism.
- (c) **Manner of reporting.** The report shall be made electronically or in writing within [twenty-four (24) hours] to the public health authority. The report shall include as much of the following information as is available: the specific illness or health condition that is the subject of the report; the patient's name, date of birth, sex, race, occupation, and current home and work addresses (including city and county); the name and address of the health care provider, coroner, or medical examiner and of the reporting individual, if different; and any other information needed to locate the patient for follow-up. For cases related to animal or insect bites, the suspected locating information of the biting animal or insect, and the name and address of any known owner, shall be reported.
- (d) **Animal diseases.** Every veterinarian, livestock owner, veterinary diagnostic laboratory director, or other person having the care of animals shall report animals having or suspected of having any diseases that may be potential causes of a public health emergency. The report shall be made electronically or in writing within [twenty-four (24) hours] to the public health authority and shall include as much of the following information as is available: the specific illness or health condition that is the subject of the report; the suspected locating information of the animal, the name and address of any known owner, and the name and address of the reporting individual.

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- (e) **Laboratories.** For the purposes of this Section, the definition of "health care provider" shall include out-of-state medical laboratories, provided that such laboratories have agreed to the reporting requirements of this State. Results must be reported by the laboratory that performs the test, but an in-state laboratory that sends specimens to an out-of-state laboratory is also responsible for reporting results.
- (f) **Enforcement.** The public health authority may enforce the provisions of this Section in accordance with existing enforcement rules and regulations.

Legislative History. In Section 301, the language used in Subsections (a) - (d) were adapted from 6 COLO. CODE REGS. § 1009-1, reg. 1 (WESTLAW through 2001), except that the lists of events in (b) was adapted from the *Bioterrorism Readiness Plan: A Template for Healthcare Facilities* (Prepared by APIC Bioterrorism Task Force & CDC Hospital Infections Program Bioterrorism Working Group). Subsection (e) was adapted from 6 COLO. CODE REGS. § 1009-1, reg. 3 (WESTLAW through 2001).

Section 302 Tracking. The public health authority shall ascertain the existence of cases of an illness or health condition that may be potential causes of a public health emergency; investigate all such cases for sources of infection and to ensure that they are subject to proper control measures; and define the distribution of the illness or health condition. To fulfill these duties, the public health authority shall identify exposed individuals as follows□

- (a) **Identification of individuals.** Acting on information developed in accordance with Section 301 of this Act, or other reliable information, the public health authority shall identify all individuals thought to have been exposed to an illness or health condition that may be a potential cause of a public health emergency.
- (b) **Interviewing of individuals.** The public health authority shall counsel and interview such individuals where needed to assist in the positive identification of exposed individuals and develop information relating to the source and spread of the illness or health condition. Such information includes the name and address (including city and county) of any person from whom the illness or health condition may have been contracted and to whom the illness or health condition may have spread.
- (c) **Examination of facilities or materials.** The public health authority shall, for examination purposes, close, evacuate, or decontaminate any facility or decontaminate or destroy any material when the authority reasonably suspects that such facility or material may endanger the public health.
- (d) **Enforcement.** The public health authority may enforce the provisions of this Section in accordance with existing enforcement rules and regulations. An order of the public health authority given to effectuate the purposes of this Section shall be enforceable immediately by the public safety authority.

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Legislative History. In Section 302, the main text under "Tracking" was adapted from CAL. HEALTH & SAFETY CODE § 120575 (West 1996). Subsections (a) and (b) were adapted from FLA. STAT. ANN. § 392.54 (West 1998); CAL. HEALTH & SAFETY CODE § 120555 (West 1996); N.Y. COMP. CODES R. & REGS. tit. 10, § 2.6 (LEXIS through Oct. 12, 2001).

Section 303 Information sharing.

- (a) Whenever the public safety authority or other state or local government agency learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that may be the cause of a public health emergency, it shall immediately notify the public health authority.
- (b) Whenever the public health authority learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that it reasonably believes has the potential to be caused by bioterrorism, it shall immediately notify the public safety authority, tribal authorities, and federal health and public safety authorities.
- (c) Sharing of information on reportable illnesses, health conditions, unusual clusters, or suspicious events between public health and safety authorities shall be restricted to the information necessary for the treatment, control, investigation, and prevention of a public health emergency.

Legislative History. Section 303 was adapted from 6 COLO. CODE REGS. § 1009-1, reg. 6 (WESTLAW through 2001).

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ARTICLE IV DECLARING A STATE OF PUBLIC HEALTH EMERGENCY

Section 401 Declaration. A state of public health emergency may be declared by the Governor upon the occurrence of a "public health emergency" as defined in Section 1-103(m). Prior to such a declaration, the Governor shall consult with the public health authority and may consult with any additional public health or other experts as needed. The Governor may act to declare a public health emergency without consulting with the public health authority or other experts when the situation calls for prompt and timely action.

Legislative History. Section 401 is adapted from language contained in COLO. REV. STAT. ANN. §§ 24-32-2104(3)(a), 4 (West 2001); 42 U.S.C.A. § 247d (West 1991 & Supp. 2001).

Section 402 Content of declaration. A state of public health emergency shall be declared by an executive order that specifies:

- (a) the nature of the public health emergency,
- (b) the political subdivision(s) or geographic area(s) subject to the declaration,
- (c) the conditions that have brought about the public health emergency,
- (d) the duration of the state of the public health emergency, if less than thirty (30) days, and
- (e) the primary public health authority responding to the emergency.

Legislative History. Section 402 is adapted from COLO. REV. STAT. ANN. § 24-32-2104(4) (West 2001); 2001 LA. ACTS 1148.

Section 403 Effect of declaration. The declaration of a state of public health emergency shall activate the disaster response and recovery aspects of the State, local, and inter-jurisdictional disaster emergency plans in the affected political subdivision(s) or geographic area(s). Such declaration authorizes the deployment and use of any forces to which the plans apply and the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or available pursuant to this Act.

- (a) **Emergency powers.** During a state of public health emergency, the Governor may:
 - (1) Suspend the provisions of any regulatory statute prescribing procedures for conducting State business, or the orders, rules and regulations of any State agency, to the extent that strict compliance with the same would prevent, hinder, or delay necessary action (including emergency purchases) by the public health authority to respond to the public health emergency, or increase the health threat to the population.

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- (2) Utilize all available resources of the State government and its political subdivisions, as reasonably necessary to respond to the public health emergency.
 - (3) Transfer the direction, personnel, or functions of State departments and agencies in order to perform or facilitate response and recovery programs regarding the public health emergency.
 - (4) Mobilize all or any part of the organized militia into service of the State. An order directing the organized militia to report for active duty shall state the purpose for which it is mobilized and the objectives to be accomplished.
 - (5) Provide aid to and seek aid from other states in accordance with any interstate emergency compact made with this State.
 - (6) Seek aid from the federal government in accordance with federal programs or requirements.
- (b) **Coordination.** The public health authority shall coordinate all matters pertaining to the public health emergency response of the State. The public health authority shall have primary jurisdiction, responsibility, and authority for:
- (1) Planning and executing public health emergency assessment, mitigation, preparedness response, and recovery for the State;
 - (2) Coordinating public health emergency response between State and local authorities;
 - (3) Collaborating with relevant federal government authorities, elected officials of other states, private organizations or companies;
 - (4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and
 - (5) Organizing public information activities regarding public health emergency response operations.
- (c) **Identification.** After the declaration of a state of public health emergency, special identification for all public health personnel working during the emergency shall be issued as soon as possible. The identification shall indicate the authority of the bearer to exercise public health functions and emergency powers during the state of public health emergency. Public health personnel shall wear the identification in plain view.

Legislative History. The main text of Section 403 was adapted from COLO. REV. STAT. ANN. § 24-32-2104(5) (West 2001); 2001 ILL. LAWS 73(11). Section 403, Subsection (a) was adapted from 2001 ILL. LAWS 73(7); except that paragraph (4) was adapted from ARIZ. REV. STAT. ANN. § 26-172 (West 2000). Subsection (b) was drafted in consideration of the Emergency Management Assistance Compact and Alaska's Interstate Civil Defense and Disaster Compact, As. § 26.23.130. Subsection (c) was adapted from KY. REV. STAT. ANN. § 39A.050(2)(d) (LEXIS through 2001 Sess.).

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Section 404 Enforcement. During a state of public health emergency, the public health authority may request assistance in enforcing orders pursuant to this Act from the public safety authority. The public safety authority may request assistance from the organized militia in enforcing the orders of the public health authority.

Legislative History. Section 404 was adapted from ARIZ. REV. STAT. ANN. § 26-172 (West 2000).

Section 405 Termination of declaration.

- (a) **Executive order.** The Governor shall terminate the declaration of a state of public health emergency by executive order upon finding that the occurrence of an illness or health condition that caused the emergency no longer poses a high probability of a large number of deaths in the affected population, a large number of incidents of serious permanent or long-term disability in the affected population, or a significant risk of substantial future harm to a large number of people in the affected population.
- (b) **Automatic termination.** Notwithstanding any other provision of this Act, the declaration of a state of public health emergency shall be terminated automatically after thirty (30) days unless renewed by the Governor under the same standards and procedures set forth in this Article. Any such renewal shall also be terminated automatically after thirty (30) days unless renewed by the Governor under the same standards and procedures set forth in this Article.
- (c) **State legislature.** By a majority vote in both chambers, the State legislature may terminate the declaration of a state of public health emergency after sixty (60) days at any time from the date of original declaration upon finding that the occurrence of an illness or health condition that caused the emergency does not or no longer poses a high probability of a large number of deaths in the affected population, a large number of incidents of serious permanent or long-term disability in the affected population, or a significant risk of substantial future harm to a large number of people in the affected population. Such a termination by the State legislature shall override any renewal by the Governor.
- (d) **Content of termination order.** All orders or legislative actions terminating the declaration of a state of public health emergency shall indicate the nature of the emergency, the area(s) that was threatened, and the conditions that make possible the termination of the declaration.

Legislative History. Section 405 was adapted from COLO. REV. STAT. ANN. §§ 24-32-2104(3)(a), 4 (West 2001); 42 U.S.C.A. § 247d (West 1991 & Supp. 2001); 2001 LA. ACTS 1148.

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ARTICLE V SPECIAL POWERS DURING A STATE OF PUBLIC HEALTH EMERGENCY: MANAGEMENT OF PROPERTY

Section 501 Emergency measures concerning facilities and materials. The public health authority may exercise, for such period as the state of public health emergency exists, the following powers over facilities or materials:

- (a) **Facilities.** To close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated any facility of which there is reasonable cause to believe that it may endanger the public health.
- (b) **Materials.** To decontaminate or cause to be decontaminated, or destroy any material of which there is reasonable cause to believe that it may endanger the public health.

Legislative History. In Section 501, Subsection (a) was adapted from GA. CODE ANN. § 38-3-51 (1995); Subsection (b) was adapted from COLO. REV. STAT. ANN. § 24-32-2104 (West 2001).

Section 502 Access to and control of facilities and property - generally. The public health authority may exercise, for such period as the state of public health emergency exists, the following powers concerning facilities, materials, roads, or public areas:

- (a) **Use of materials and facilities.** To procure, by condemnation or otherwise, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof. Such materials and facilities include, but are not limited to, communication devices, carriers, real estate, fuels, food, and clothing.
- (b) **Use of health care facilities.** To require a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization or the ability to continue doing business in the state as a health care facility. The use of the health care facility may include transferring the management and supervision of the health care facility to the public health authority for a limited or unlimited period of time, but shall not exceed the termination of the declaration of a state of public health emergency.
- (c) **Control of materials.** To inspect, control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of food, fuel, clothing and other commodities, as may be reasonable and necessary to respond to the public health emergency.
- (d) **Control of roads and public areas.**

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- (1) To prescribe routes, modes of transportation, and destinations in connection with evacuation of persons or the provision of emergency services.
- (2) To control or limit ingress and egress to and from any stricken or threatened public area, the movement of persons within the area, and the occupancy of premises therein, if such action is reasonable and necessary to respond to the public health emergency.

Legislative History. In Section 502, Subsections (a) and (b) were adapted from GA. CODE ANN. § 38-3-51 (1995). Subsections (c) and (d) were adapted from 2001 LA. ACTS 1148; 2001 ILL. LAWS 73; except that (d)(2) also had GA. CODE ANN. § 38-3-51 (1995) as a source.

Section 503 Safe disposal of infectious waste. The public health authority may exercise, for such period as the state of public health emergency exists, the following powers regarding the safe disposal of infectious waste:

- (a) **Adopt measures.** To adopt and enforce measures to provide for the safe disposal of infectious waste as may be reasonable and necessary to respond to the public health emergency. Such measures may include, but are not limited to, the collection, storage, handling, destruction, treatment, transportation, and disposal of infectious waste.
- (b) **Control of facilities.** To require any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this State, and any landfill business or other such property, to accept infectious waste, or provide services or the use of the business, facility, or property if such action is reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization, or the ability to continue doing business in the state as such a business or facility. The use of the business, facility, or property may include transferring the management and supervision of such business, facility, or property to the public health authority for a limited or unlimited period of time, but shall not exceed the termination of the declaration of a state of public health emergency.
- (c) **Use of facilities.** To procure, by condemnation or otherwise, any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this State and any landfill business or other such property as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof.
- (d) **Identification.** All bags, boxes, or other containers for infectious waste shall be clearly identified as containing infectious waste, and if known, the type of infectious waste.

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Legislative History. In Section 503, Subsection (d) was adapted from OR. REV. STAT. § 459.390 (1999); MINN. STAT. ANN. § 116.78(2) (West 1997 & Supp. 2001); MONT. CODE ANN. § 75-10-1005 (2001).

Section 504 Safe disposal of human remains. The public health authority may exercise, for such period as the state of public health emergency exists, the following powers regarding the safe disposal of human remains□

- (a) **Adopt measures.** To adopt and enforce measures to provide for the safe disposal of human remains as may be reasonable and necessary to respond to the public health emergency. Such measures may include, but are not limited to, the embalming, burial, cremation, interment, disinterment, transportation, and disposal of human remains.
- (b) **Possession.** To take possession or control of any human remains.
- (c) **Disposal.** To order the disposal of any human remains of a person who has died of a contagious disease through burial or cremation within twenty-four (24) hours after death. To the extent possible, religious, cultural, family, and individual beliefs of the deceased person or his or her family shall be considered when disposing of any human remains.
- (d) **Control of facilities.** To require any business or facility authorized to embalm, bury, cremate, inter, disinter, transport, and dispose of human remains under the laws of this State to accept any human remains or provide the use of its business or facility if such actions are reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization, or the ability to continue doing business in the state as such a business or facility.. The use of the business or facility may include transferring the management and supervision of such business or facility to the public health authority for a limited or unlimited period of time, but shall not exceed the termination of the declaration of a state of public health emergency.
- (e) **Use of facilities.** To procure, by condemnation or otherwise, any business or facility authorized to embalm, bury, cremate, inter, disinter, transport, and dispose of human remains under the laws of this State as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof.
- (f) **Labeling.** Every human remains prior to disposal shall be clearly labeled with all available information to identify the decedent and the circumstances of death. Any human remains of a deceased person with a contagious disease shall have an external, clearly visible tag indicating that the human remains is infected and, if known, the contagious disease.
- (g) **Identification.** Every person in charge of disposing of any human remains shall maintain a written or electronic record of each human remains and all available information to identify the decedent and the circumstances of death and disposal.

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If human remains cannot be identified prior to disposal, a qualified person shall, to the extent possible, take fingerprints and photographs of the human remains, obtain identifying dental information, and collect a DNA specimen. All information gathered under this paragraph shall be promptly forwarded to the public health authority.

Legislative History. In Section 504, Subsection (a) is adapted from CAL. HEALTH & SAFETY CODE § 102115 (West 1996); GA. CODE ANN. § 43-18-72(b) (1999). Subsection (b) is adapted from CAL. HEALTH & SAFETY CODE § 120140 (West 1996). Subsection (c) is adapted from OHIO REV. CODE ANN. § 3707.19 (Anderson 1999). Subsection (d) is adapted from KY. REV. STAT. ANN. § 39F.020(4) (LEXIS through 2001 Sess.). Subsection (f) is adapted from LA. REV. STAT. ANN. § 40:1099.1 (West 2001). Subsection (g) was adapted from OHIO REV. CODE ANN. § 313.08 (Anderson 1998 & Supp. 2000).

Section 505 Control of health care supplies.

- (a) **Procurement.** The public health authority may purchase and distribute anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies that it deems advisable in the interest of preparing for or controlling a public health emergency, without any additional legislative authorization.
- (b) **Rationing.** If a state of public health emergency results in a state-wide or regional shortage or threatened shortage of any product under (a), whether or not such product has been purchased by the public health authority, the public health authority may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of the relevant product necessary to protect the public health, safety, and welfare of the people of the State.
- (c) **Priority.** In making rationing or other supply and distribution decisions, the public health authority may give preference to health care providers, disaster response personnel, and mortuary staff.
- (d) **Distribution.** During a state of public health emergency, the public health authority may procure, store, or distribute any anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies located within the State as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof. If a public health emergency simultaneously affects more than one state, nothing in this Section shall be construed to allow the public health authority to obtain anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies for the primary purpose of hoarding such items or preventing their fair and equitable distribution among affected states.

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Legislative History. In Section 505, Subsection (a) was adapted from N.H. REV. STAT. ANN. § 141-C-17 (1996). Subsection (b) was adapted from CONN. GEN. STAT. ANN. § 42-231 (West 1958).

Section 506 Compensation. The State shall pay just compensation to the owner of any facilities or materials that are lawfully taken or appropriated by a public health authority for its temporary or permanent use under this Article according to the procedures and standards set forth in Section 805 of this Act. Compensation shall not be provided for facilities or materials that are closed, evacuated, decontaminated, or destroyed when there is reasonable cause to believe that they may endanger the public health pursuant to Section 501.

Section 507 Destruction of property. To the extent practicable consistent with the protection of public health, prior to the destruction of any property under this Article, the public health authority shall institute appropriate civil proceedings against the property to be destroyed in accordance with the existing laws and rules of the courts of this State or any such rules that may be developed by the courts for use during a state of public health emergency. Any property acquired by the public health authority through such proceedings shall, after entry of the decree, be disposed of by destruction as the court may direct.

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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.*]

1st Draft

The Model State Emergency Health Powers Act

As of October 23, 2001

**Prepared by
The Center for Law and the Public's Health
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For the Centers for Disease Control and Prevention

In collaboration with the:

**National Governors Association,
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Association of State and Territorial Health Officials,
National Association of City and County Health Officers,
and National Association of Attorneys General**

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