

The Draft Model State Emergency Health Powers Act

Guidelines for Consideration by the States

As of October 23, 2001

**Prepared by
The Center for Law and the Public's Health
at Johns Hopkins and Georgetown Universities**

For the Centers for Disease Control and Prevention

In collaboration with the:

**National Governors Association,
National Conference of State Legislatures,
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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Preface

Attached is the draft Model State Emergency Health Powers Act prepared by Professor Larry Gostin and his team at the Center for Law and the Public's Health at Johns Hopkins and Georgetown Universities. This draft has been designed by adopting a number of provisions now in place in several states. The model law is intended to serve as a resource for states wishing to develop new legislation or enhance existing legislation in light of recent events.

In reviewing the attached draft model, states should assess whether the powers provided for in the act are available to the Governor (or his or her designee) in existing public health and/or emergency preparedness laws, including those pertaining to a declaration of a state of emergency. States may adopt any or all of the resulting model legislation, as well as tailor it to meet their individual needs.

This legislation is intended to provide states with strong public health powers to rapidly detect and effectively respond to bioterrorism and other emergency health threats. The Act would give public health authorities special powers to identify and monitor health threats, control property, and control persons where necessary to protect the public's health and security. You will note that this draft attempts to adapt existing state statutory language. To assist governors, legislators, and health officials, this draft cites existing state statutes that provide support for the specific provisions in the Act.

In reviewing the Act, we invite you to consider the questions below and contact Professor Gostin at Georgetown with any questions or for further assistance (his contact information is listed on the cover of the draft Act).

For information concerning NGA's activities concerning bioterrorism, please contact Ann Beauchesne in the NGA Center for Best Practices (202-624-5370 or abeauchesne@nga.org.)

QUESTIONS FOR GOVERNORS AND STAFF RELATED TO THE MODEL STATE EMERGENCY HEALTH POWERS ACT

1. Are the tracking mechanisms in the model act sufficient to detect and prevent a public health emergency?
2. Should the Governor have the sole power to declare a public health emergency?
3. Can the Governor delegate that authority to the state's highest-ranking health officer?
4. Should the executive power to declare the emergency be conditioned on legislative approval or agreement among public health, law enforcement, or other relevant state authorities?
5. What are the appropriate criteria for declaring or terminating a public health emergency?
6. What limits should exist relating to the declaration of a public health emergency?
7. How does the Model Act supplement or conflict with existing state public health powers?
8. Does the Model Act strike the right balance between state and local public health authorities?

9. Does the Model Act give the state health department excessive powers compared with other response agencies (e.g., law enforcement, emergency personnel)?
10. Will the executive authority have the funding authority or sufficient access to funds to procure supplies or conduct other executive affairs during a public health emergency?
11. Are the financing provisions of the Act consistent with existing state policies?
12. Are the provisions for controlling persons consistent with existing state law or policy?
13. Is it appropriate to require individuals to be vaccinated or treated for all infectious conditions, or simply contagious conditions?
14. Should the Model Act recognize an exception to mandatory personnel controls for persons claiming religious or philosophical objections?
15. Are access and disclosure provisions in the model law consistent with state public health information privacy laws?
16. Should public health and public safety authorities share confidential health data to thwart potential or actual threats to public health from bioterrorism or other health emergencies?
17. Does the model law place too great a burden or responsibility on private sector entities, including private hospitals or health care workers, to participate in accomplishing public health goals during an emergency?
18. Will the planning functions of the model law help to improve public health preparedness at state and local levels?
19. Are the immunities to liability for state actors and certain private sector actors sufficient to protect persons acting in the interests of public health?
20. Do the compensation provisions properly distinguish between the ways that public health authorities can lawfully abate nuisances (which do not require compensation) and appropriate private property for public health uses (which may require compensation)?

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PREAMBLE

In the wake of the tragic events of September 11, 2001, our nation has come to the realization 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 extraordinary government functions. Because each state is responsible for safeguarding the health, security, and well being of its people, state governments must be able to respond, rapidly and effectively, to potential or actual 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 authorizes the collection of data and records, the control of property, the management of persons, and access to communications. It facilitates the early detection of a health emergency, and allows for immediate investigation by granting access to individuals' health information under specified circumstances. Under the Act, state officials are authorized to use and appropriate property as necessary for the care, treatment, and housing of patients, and for the destruction of contaminated materials. They are also empowered to provide care and treatment to persons who are ill or who have been exposed to infection, and to separate affected individuals from the population at large for the purpose of interrupting the transmission of infectious disease. Finally, the Act requires the development of a comprehensive plan to provide a coordinated, appropriate response in the event of a public health emergency.

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, states 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 given 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 officials with the ability to prevent, detect, manage, and contain emergency health threats without unduly interfering with civil rights and

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liberties. The Act ensures a strong, effective, and timely response to public health emergencies, while fostering respect for individuals from all groups and backgrounds.

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ARTICLE I TITLE, FINDINGS, PURPOSES, AND DEFINITIONS

Section I01 **Short title.** This Act may be cited as the “Model State Emergency Health Powers Act.”

Section I02 **Legislative Findings.** The [*state legislature*] finds that—

- (a) The government must do more to protect the health, safety, and general well being of our 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 called for.
- (d) Emergency health threats, including those caused by bioterrorism and epidemics, require the exercise of extraordinary government 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, 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 the overriding importance of the public’s health and security.
- (j) This Act is necessary to protect the health and safety of the citizens of this State.

Section I03 **Purposes.** The purposes of this Act are—

- (a) To authorize the collection of data and records, the control of property, the management of persons, and access to communications.
- (b) 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.
- (c) To grant State officials the authority to use and appropriate property as necessary for the care, treatment, and housing of patients, and for the destruction of contaminated materials.
- (d) To grant State officials the authority to provide care and treatment to persons who are ill or who have been exposed to infection, and to separate affected individuals

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from the population at large for the purpose of interrupting the transmission of infectious disease.

- (e) To ensure that the needs of infected or exposed persons will be addressed to the fullest extent possible, given the primary goal of controlling serious health threats.
- (f) To provide State officials with the ability to prevent, detect, manage, and contain emergency health threats without unduly interfering with civil rights and liberties.
- (g) To require the development of a comprehensive plan to provide for a coordinated, appropriate response in the event of a public health emergency.

Section I04 **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**” means 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, animal to person, or insect 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, health maintenance organizations, 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. The term 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.
- (e) “**Health care provider**” means any person or entity who provides health care services including, but not limited to, hospitals, medical clinics and offices,

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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. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.
- (g) “**Infectious waste**” means—
 - (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, 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, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling, and syringes that have been removed from their original sterile containers.
- (h) “**Isolation**” and “**quarantine**” mean the compulsory physical separation (including the restriction of movement or confinement) of individuals and/or groups believed to have been exposed to or known to have been infected with a contagious disease from individuals who are believed not to have been exposed or infected, in order to prevent or limit the transmission of the disease to others.
- (i) “**Mental health support personnel**” includes, but is not limited to, psychiatrists, psychologists, social workers, and volunteer crisis counseling groups.
- (j) “**Protected health information**” means any information, whether oral, written, electronic, visual, pictorial, physical, 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 information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

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- (k) “**Public health authority**” means 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 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.
- (l) A “**public health emergency**” is an occurrence or imminent threat of an illness or health condition, caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agent or biological toxin, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Such illness or health condition includes, but is not limited to, an illness or health condition resulting from a natural disaster.
- (m) “**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 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.
- (n) “**Specimens**” include, but are not limited to, blood, sputum, urine, stool, other bodily fluids, wastes, tissues, and cultures necessary to perform required tests.
- (o) “**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.

COMMENTS

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 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 MEASURES TO DETECT AND TRACK POTENTIAL AND EXISTING
PUBLIC HEALTH EMERGENCIES

Section II01 **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 caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins and might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. 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 as potential causes of a public health emergency.
- (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 caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins and might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Prescription-related events that require a report include, but are not limited to—
 - (1) an unusual increase in the number of prescriptions to treat fever, respiratory, or gastrointestinal complaints;
 - (2) an unusual increase in the number of prescriptions for antibiotics;
 - (3) an unusual increase in the number of requests for information on over-the-counter pharmaceuticals to treat fever, respiratory, or gastrointestinal complaints; and
 - (4) any prescription that treats a disease that is relatively uncommon and has bioterrorism potential.
- (c) **Manner of reporting.** The report shall be made in writing within twenty-four hours to the public health authority. The report shall include as much of the following information as is available: the patient's name, date of birth, sex, race, and current address (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 disease that may be caused by

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bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins and might pose a substantial risk of a significant number of human and animal fatalities or incidents of permanent or long-term disability. The report shall be made in writing within twenty-four hours to the public health authority and shall include as much of the following information as is available: the suspected locating information of the animal, the name and address of any known owner, and the name and address of the reporting individual.

- (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.

COMMENTS

In Section 201, 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 II02 **Tracking.** The public health authority shall ascertain the existence of cases of an illness or health condition, caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agent or biological toxin, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability; 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 201 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, caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins, that poses a

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substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.

- (b) **Interviewing of individuals.** The public health authority shall counsel and interview such individuals as appropriate 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.** An order of the public health authority given to effectuate the purposes of this Section shall be enforceable immediately by the public safety authority.

COMMENTS

In Section 202, 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 II03 **Information sharing.**

- (a) Whenever the public safety authority learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event, 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 must immediately notify the appropriate 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 authorized personnel shall be restricted to information necessary for the treatment, control, investigation, and prevention of a public health emergency.

COMMENTS

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Section 203 was adapted from 6 COLO. CODE REGS. § 1009-1, reg. 6 (WESTLAW through 2001).

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ARTICLE III DECLARING STATE OF PUBLIC HEALTH EMERGENCY

Section III01 **Standards for declaration.** A state of public health emergency shall be declared by the Governor if the Governor finds an occurrence or imminent threat of an illness or health condition, caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. To make such a finding, the Governor shall consult with the public health authority and may consult with any public health and other experts as needed. Nothing in the duty of the Governor to consult with the public health authority or the discretion to consult with public health or other experts shall be construed to limit the Governor's authority to act without such consultation when the situation calls for prompt and timely action.

COMMENTS

Section 301 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 III02 **Procedures for declaration.** The state of public health emergency shall be declared by an executive order that indicates the nature of the public health emergency, the area(s) that is or may be threatened, and the conditions that have brought about the public health emergency.

COMMENTS

Section 302 is adapted from COLO. REV. STAT. ANN. § 24-32-2104(4) (West 2001); 2001 LA. ACTS 1148.

Section III03 **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 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 arranged to be made available pursuant to this Act.

- (a) **Emergency powers.** During a state of public health emergency, the Governor may:

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- (1) Suspend the provisions of any regulatory statute prescribing procedures for conducting State business, or the orders, rules and regulations of any State agency, if 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, and increase the health threat to the population.
 - (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 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.
- (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 private sector companies;
 - (4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and
 - (5) Organizing public information activities regarding State 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.

COMMENTS

The main text of Section 303 was adapted from COLO. REV. STAT. ANN. § 24-32-2104(5) (West 2001); 2001 ILL. LAWS 73(11). Section 303, Subsection (a) was adapted from 2001 ILL.

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LAWS 73(7); except that paragraph (4) was adapted from ARIZ. REV. STAT. ANN. § 26-172 (West 2000). Section 303, 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.).

Section III04 **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.

COMMENTS

Section 304 was adapted from ARIZ. REV. STAT. ANN. § 26-172 (West 2000).

Section III05 **Termination of declaration.**

- (a) **Executive order.** The Governor shall terminate the state of public health emergency by executive order upon finding that the occurrence of an illness or health condition caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins no longer poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability or that the imminent threat of such an occurrence has passed.
- (b) **Automatic termination.** Notwithstanding any other provision of this Act, a state of public health emergency shall be terminated automatically thirty days after its declaration unless renewed by the Governor under the same standards and procedures set forth in this Article for a declaration of a state of public health emergency. Any such renewal shall also be terminated automatically after thirty days unless renewed by the Governor under the same standards and procedures set forth in this Article for a declaration of a state of public health emergency.
- (c) **State legislature.** *[By a two-thirds vote of both chambers,]* the State legislature may terminate a state of public health emergency after sixty days from the date of original declaration upon finding that the occurrence of an illness or health condition caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins no longer poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-

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term disability or that the imminent threat of such an occurrence has passed. Such a termination by the State legislature shall override any renewal by the Governor.

- (d) **Content of termination order.** All orders terminating 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 state of public health emergency.

COMMENTS

Section 305 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 IV SPECIAL POWERS DURING STATE OF PUBLIC HEALTH EMERGENCY:
CONTROL OF PROPERTY

Section IV01 **Emergency measures concerning dangerous facilities and materials.**

The public health authority may exercise, for such period as the state of public health emergency exists, the following powers over dangerous 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.

COMMENTS

In Section 401, 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 IV02 **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 facilities and materials.** To procure, by condemnation or otherwise, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities as may be reasonable and necessary for emergency response, 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, clothing, and health care facilities.
- (b) **Use of health care facilities.** To compel a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary for emergency response. 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 state of public health emergency.
- (c) **Control of materials.** To control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale, dispensing, distribution, or transportation of food, fuel, clothing and other

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commodities, alcoholic beverages, firearms, explosives, and combustibles, as may be reasonable and necessary for emergency response.

(d) **Control of roads and public areas.**

(1) To prescribe routes, modes of transportation, and destinations in connection with evacuation of persons or the provision of emergency services.

(2) To control 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 for emergency response.

COMMENTS

In Section 402, 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 IV03 **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 for emergency response. 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 compel 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 for emergency response. 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 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 for emergency response, with the right to take immediate possession thereof.

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- (d) **Identification.** All bags, boxes, or other containers for infectious waste shall be clearly identified as containing infectious waste.

COMMENTS

In Section 403, 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 IV04 **Safe disposal of corpses.** 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 corpses—

- (a) **Adopt measures.** To adopt and enforce measures to provide for the safe disposal of corpses as may be reasonable and necessary for emergency response. Such measures may include, but are not limited to, the embalming, burial, cremation, interment, disinterment, transportation, and disposal of corpses.
- (b) **Possession.** To take possession or control of any corpse.
- (c) **Disposal.** To order the disposal of any corpse of a person who has died of an infectious disease through burial or cremation within twenty-four hours after death.
- (d) **Control of facilities.** To compel any business or facility authorized to embalm, bury, cremate, inter, disinter, transport, and dispose of corpses under the laws of this State to accept any corpse or provide the use of its business or facility if such actions are reasonable and necessary for emergency response. 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 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 corpses under the laws of this State as may be reasonable and necessary for emergency response, with the right to take immediate possession thereof.
- (f) **Labeling.** Every corpse prior to disposal shall be clearly labeled with all available information to identify the decedent and the circumstances of death. Any corpse of a deceased person with an infectious disease shall have an external, clearly visible tag indicating that the corpse is infected and, if known, the infectious disease.
- (g) **Identification.** Every person in charge of disposing of any corpse shall maintain a written record of each corpse and all available information to identify the

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decedent and the circumstances of death and disposal. If a corpse cannot be identified, prior to disposal a qualified person shall, to the extent possible, take fingerprints and one or more photographs of the corpse, and collect a DNA specimen. All information gathered under this paragraph shall be promptly forwarded to the public health authority.

COMMENTS

In Section 404, 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 IV05 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 covered by Subsection (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, price fixing, allocation or other means, the use, sale, dispensing, distribution, or transportation of the relevant product necessary to protect the health, safety, and welfare of the people of the State. 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.
- (c) **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 for emergency response, 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-

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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.

COMMENTS

In Section 405, 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 IV06 **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 401.

Section IV07 **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 V SPECIAL POWERS DURING STATE OF PUBLIC HEALTH EMERGENCY:
CONTROL OF PERSONS

Section V01 **Control of individuals.** 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 infectious disease are subject to proper control and treatment.

COMMENTS

In Section 501, the text immediately following the heading “Control of individuals” was adapted from CAL. HEALTH & SAFETY CODE § 120575 (West 1996).

Section V02 **Mandatory medical examinations.** The public health authority may exercise, for such period as the state of public health emergency exists, the following emergency powers over persons—

- (a) **Individual examination or testing.** To compel a person to submit to a physical examination and/or testing as necessary to diagnose or treat the person.
 - (1) The medical examination and/or testing may be performed by any qualified person authorized by the public health authority.
 - (2) The medical examination and/or testing must not be reasonably likely to result in serious harm to the affected individual.
 - (3) The medical examination and/or testing shall be performed immediately upon the order of the public health authority without resort to judicial or quasi-judicial authority.
 - (4) Any person refusing to submit to the medical examination and/or testing is liable for a misdemeanor. If the public health authority is uncertain whether a person who refuses to undergo medical examination and/or testing may have been exposed to an infectious disease or otherwise poses a danger to public health, the public health authority may subject the individual to isolation or quarantine as provided in this Article.
- (b) **Health care provider assistance.** To require any physician or other health care provider to perform the medical examination and/or testing. Any person refusing to perform a medical examination or test as authorized herein shall be liable for a misdemeanor.
- (c) **Enforcement.** An order of the public health authority given to effectuate the purposes of this subsection shall be immediately enforceable by any peace officer.

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In Section 502, Subsection (a) 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 V03 **Isolation and quarantine.**

- (a) **State policy and powers.** It is the policy of the State that the individual dignity of any person isolated or quarantined during a state of public health emergency shall be respected at all times and upon all occasions. The needs of persons isolated or quarantined shall be addressed in a systematic and competent fashion. To the extent possible, the premises in which persons are isolated or quarantined shall be maintained in safe and hygienic manners, designed to minimize the likelihood of further transmission of infection or other harm to persons subject to isolation or quarantine. Adequate food, clothing, medication, and other necessities, and competent medical care shall be provided. Consistent with this policy, the public health authority may exercise, for such period as the state of public health emergency exists, the following emergency powers over persons—
- (1) To establish and maintain places of isolation and quarantine; and
 - (2) To require isolation or quarantine of any person by the least restrictive means necessary to protect the public health. All reasonable means shall be taken to prevent the transmission of infection among the isolated or quarantined individuals.
- (b) **Individual cooperation.** A person subject to isolation or quarantine shall obey the public health authority's rules and orders, shall not go beyond the isolation or quarantine premises, and shall not put himself or herself in contact with any person not subject to isolation or quarantine other than a physician or other health care provider, public health authority, or person authorized to enter an isolation or quarantine premises by the public health authority. Failure to obey these provisions shall constitute a misdemeanor.
- (c) **Unauthorized entry.** No person, other than a person authorized by the public health authority, shall enter an isolation or quarantine premises. If any person enters an isolation or quarantine premises without permission of the public health authority, that person shall be liable for a misdemeanor. If, by reason of an unauthorized entry into an isolation or quarantine premises, the person poses a danger to public health, he or she may be subject to isolation or quarantine pursuant to the provisions of this Article.

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- (d) **Termination.** Isolation or quarantine of any person shall be terminated when the public health authority determines that such isolation or quarantine of such person is no longer necessary to protect the public health.
- (e) **Due process.**
- (1) Before isolating or quarantining a person, the public health authority shall obtain a written, ex parte order from a court of this state authorizing such action. The court shall grant such order upon finding that probable cause exists to believe isolation or quarantine is warranted pursuant to the provisions of this Act. A copy of the authorizing order shall be given to the person isolated or quarantined, along with notification that the person has a right to a hearing under this paragraph.
 - (2) Notwithstanding the preceding subparagraph, the public health authority may isolate or quarantine a person without first obtaining a written, ex parte order from the court if any delay in the isolation or quarantine of the person would pose an immediate threat to the public health. Following such isolation or quarantine, the public health authority shall promptly obtain a written, ex parte order from the court authorizing the isolation or quarantine.
 - (3) A person isolated or quarantined pursuant to the provisions of subparagraphs (1) or (2) shall have the right to a court hearing to contest the ex parte order. If such person or his or her representative requests a hearing, the hearing shall be held within seventy-two hours of receipt of such request, excluding Saturdays, Sundays and legal holidays. The request must be in writing. A request for a hearing shall not stay the order of isolation or quarantine. At the hearing, the public health authority must show that the isolation or quarantine is warranted pursuant to the provisions of this Section.
 - (4) On or after thirty days following a hearing on the ex parte order or such hearing as is provided for in this subparagraph, a person isolated or quarantined pursuant to the provisions of this Section may request in writing a court hearing to contest his or her continued isolation or quarantine. The hearing shall be held within seventy-two hours of receipt of such request, excluding Saturdays, Sundays and legal holidays. A request for a hearing shall not alter the order of isolation or quarantine. At the hearing, the public health authority must show that continuation of the isolation or quarantine is warranted pursuant to the provisions of this Section.
 - (5) A person isolated or quarantined pursuant to the provisions of this Section may request a hearing in the courts of this State for remedies regarding his or her treatment and the terms and conditions of such quarantine or isolation. Upon receiving a request for either type of hearing described in this subparagraph, the court shall fix a date for a hearing. The hearing shall take place within ten days of the receipt of the request by the court. The request for a hearing shall not alter the order of isolation or quarantine.

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- (6) If, upon a hearing, the court finds that the isolation or quarantine of the individual is not warranted under the provisions of this Section, then the person shall be released from isolation or quarantine. If the court finds that the isolation or quarantine of the individual is not in compliance with the provisions of paragraph (a), the court may then fashion remedies appropriate to the circumstances of the state of public health emergency and in keeping with the provisions of this Act.
- (7) Judicial decisions shall be based upon clear and convincing evidence, and a written record of the disposition of the case shall be made and retained. The petitioner shall have the right to be represented by counsel or other lawful representative. The manner in which the request for a hearing is filed and acted upon will be in accordance with the existing laws and rules of the courts of this State or any such rules that are developed by the courts for use during a state of public health emergency.

COMMENTS

Section 503 was 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 V04 **Vaccination and treatment.** The public health authority may exercise, for such period as the state of public health emergency exists, the following emergency powers over persons—

- (a) **In general.** To compel a person to be vaccinated and/or treated for an infectious disease.
 - (1) Vaccination may be performed by any qualified person authorized by the public health authority.
 - (2) The vaccine shall not be given if the public health authority has reason to know that a particular individual is likely to suffer from serious harm from the vaccination.
 - (3) Treatment may be performed by any qualified person authorized by the public health authority.
 - (4) Treatment must not be such as is reasonably likely to lead to serious harm to the affected individual.
- (b) **Refusal.** Individuals refusing to be vaccinated or treated shall be liable for a misdemeanor. If, by reason of refusal of vaccination or treatment, the person

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poses a danger to the public health, he or she may be subject to isolation or quarantine pursuant to the provisions of this Article.

- (c) **Enforcement.** An order of the public health authority given to effectuate the purposes of this Section shall be immediately enforceable by any peace officer.

COMMENTS

Section 504 was adapted from CAL. HEALTH & SAFETY CODE §§ 120175, 120575, 120605 (West 1996); CAL. HEALTH & SAFETY CODE § 120580 (West 1996 & Supp. 2001).

Section V05 **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 any person or animal, living or deceased, and acquire any previously collected specimens or test results that are reasonable and necessary for emergency response.

- (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.

COMMENTS

Section 505 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).

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Section V06 Access and disclosure of patient records.

- (a) **Access to patient records.** Access to protected health information of patients under the isolation, quarantine, or care of the public health authority shall be limited to those persons having a legitimate need to acquire or use the information for purposes of providing treatment or care to the individual who is the subject of the health information, conducting epidemiologic research, or investigating the causes of transmission.
- (b) **Disclosure of patient records.** Protected health information held by the public health authority shall not be disclosed to others without individual specific informed consent, except for disclosures made:
 - (1) directly to the individual;
 - (2) to the individual's immediate family members or life partners;
 - (3) to appropriate federal agencies or authorities;
 - (4) to health care personnel where needed to protect the health or life of the individual who is the subject of the information;
 - (5) pursuant to a court order or executive order of the Governor to avert a clear danger to an individual or the public health; or
 - (6) to identify a deceased individual or determine the manner or cause of death.

COMMENTS

Section 506 was adapted from LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

Section V07 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 of health personnel—

- (a) **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 for emergency response.
 - (1) The appointment of out-of-state emergency health care providers pursuant to this Section may be for a limited or unlimited time, but shall not exceed the termination of the 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

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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 emergency response 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.
- (b) **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 pursuant to this Section may be for a limited or unlimited time, but shall not exceed the termination of the 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 any or all licensing requirements, permits, or fees required by the State code and applicable orders, rules, or regulations for the performance of these duties.
 - (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.

COMMENTS

Section 507(a) was adapted from FLA. STAT. ANN. § 768.13(2)(b)(1) (West 1997 & Supp. 2001). Subsection (b) 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 VI PUBLIC INFORMATION REGARDING PUBLIC HEALTH EMERGENCY

Section VI01 **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, 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 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.

COMMENTS

In Section 601, 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 VI02 **Provision of access to mental health support personnel.** During and after 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.

COMMENTS

Section 602 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 VII PLANNING FOR PUBLIC HEALTH EMERGENCY

Section VII01 **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, and any other persons chosen by the Governor. The Governor shall designate the chair of the Commission.

COMMENTS

Section 701 is adapted from COLO. REV. STAT. ANN. § 24-32-2104 (West 2001); 2001 ILL. LAWS 73(5).

Section VII02 **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 for the following:
- (1) A means of notifying and communicating with the population during a state of public health emergency in compliance with this Act;
 - (2) Centralized coordination of resources, manpower, and services, including coordination of responses by State, local, and federal agencies;
 - (3) The location, procurement, storage, transportation, maintenance, and distribution of essential materials, including medical supplies, drugs, vaccines, food, shelter, and beds;
 - (4) 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;
 - (5) The method of evacuating populations, and housing and feeding the evacuated populations;
 - (6) The identification and training of health care providers to diagnose and treat persons with infectious diseases;
 - (7) Guidelines for the vaccination of persons, in compliance with the provisions of this Act;
 - (8) Guidelines for the treatment of persons who have been exposed to or who are infected with diseases or health conditions caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or

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- biological toxins, that pose a substantial risk of a significant number of fatalities or incidents of permanent or long-term disability. The guidelines should cover, but not be limited to, the following diseases: anthrax, botulism, smallpox, plague, tularemia, and viral hemorrhagic fevers;
- (9) Guidelines for the safe disposal of corpses, in compliance with the provisions of this Act;
 - (10) Guidelines for the safe disposal of infectious waste, in compliance with the provisions of this Act;
 - (11) Guidelines for the safe and effective management of persons isolated, quarantined, vaccinated, or treated during a state of public health emergency;
 - (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, with such sites complying with the provisions of this Act regarding the least restrictive means for isolation and quarantine, and the requirements for the safety, health and maintenance of personal dignity of those isolated or quarantined;
 - (ii) sites where medical supplies, food, and other essentials can be distributed to the population;
 - (iii) sites where emergency workers can be housed and fed;
 - (iv) routes and means of transportation of people and materials;
 - (14) Coordination with other states and the federal government;
 - (15) Taking into account cultural norms, values, and traditions that may be relevant;
 - (16) Distribution of this plan and guidelines to those who will be responsible for implementing the plan; and
 - (17) Other measures necessary to carry out the purposes of this Act.
- (b) **Review.** The Commission shall review its plan for responding to a public health emergency every two years.

COMMENTS

Section 702 is adapted from COLO. REV. STAT. ANN. § 24-32-2104 (West 2001); 2001 ILL. LAWS 73(5).

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ARTICLE VIII MISCELLANEOUS

Section VIII01 **Titles.** For the purposes of this Act, titles and subtitles of Articles, Sections, and Subsections are instructive, but not binding.

Section VIII02 **Rules and regulations.** The public health authority is 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 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 VIII03 **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 to meet the 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 approval of the Governor.
 - (2) The aggregate amount of all expenses incurred under the provisions of 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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COMMENTS

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 VIII04 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 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.
- (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.

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COMMENTS

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

Section VIII05 **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 Article IV, Section 405 shall be limited to the costs incurred to produce the item.

COMMENTS

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

Section VIII06 **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.

COMMENTS

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

Section VIII07 **Repeals.** The following acts, laws, or parts thereof, are explicitly repealed with the passage of this Act:

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- (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] . . .*

COMMENTS

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

Section VIII08 **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.

COMMENTS

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

Section VIII09 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.

COMMENTS

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

Section VIII10 **Reports.** Not later than ninety days after the date of the enactment of this Act, and every twelve months thereafter, the Governor shall transmit to the *[state legislature]* a report that shall include:

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- (a) A description of the detection and tracking efforts made under this Act;
- (b) A description of the state(s) of public health emergencies declared under this Act;
- (c) A description of the emergency powers utilized under this Act; and
- (d) A description of the monies transferred and liabilities and expenses incurred under this Act.

Section VIII11 **Effective date.** The provisions of this Act shall take effect upon signature of the Governor. [*State to insert language appropriate to its legislative process.*]