



policy points

Strengthening State Public Health Policies In preparation for a large-scale bioterrorist attack, the CDC has drafted a new law for states which would grant exceptionally broad powers to public health authorities in emergencies.

BY JEFF ATKINSON



If there was a massive bioterrorist attack somewhere in the U.S. and

people began falling ill in large numbers, what could state health departments do to protect the population?

Compulsory medical examinations of individuals, quarantine of those who have been exposed to a contagious disease, cremation or burial of bodies within 24 hours of death, and taking control of health-care facilities—these are among the powers that might be exercised by public health authorities during a time of a

“public health emergency.”

As part of preparation for a public health emergency, the [United States Centers for Disease Control and Prevention \(CDC\)](#), with help from two universities, has drafted the [Model State Emergency Health Powers Act \(MSEHPA\)](#). This act is designed to provide state health departments with substantial powers to manage a

public health emergency. [The Center for Law and the Public's Health](#), of Washington, DC, (established by Georgetown and Johns Hopkins Universities) did the primary drafting of the act.

The project also received input from the [National Governors Association](#), the [National Conference of State Legislatures](#), and state and local public health

associations, although the MSEHPA does not represent the official policy of those organizations. The first draft of the act was issued in October 2001, and a second draft was issued in December.

The MSEHPA has been sent to state legislatures with a recommendation by the drafters for adoption or for use when states consider how to revise their current public health laws. A number of states are already considering the law. As of early February, the MSEHPA has been introduced in the legislatures of 17 states (CA, DE, GA, HI, IL, KY, MA, MN, MO, MS, NE, NM, NY, PA, TN, UT, and WA), and the act is being reviewed by government

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officials in many other states.

The provisions of the act also might serve as a model to the federal government if the federal government seeks to issue emergency regulations in the event of a national public health disaster. The 39-page act is available online at www.publichealthlaw.net.

Rapid response

The introductory language of the model act states, "This State must have the ability to respond, rapidly and effectively, to potential or actual public health emergencies," particularly those caused by bioterrorism. At the same time, the act seeks to respect "[t]he rights of people to liberty, bodily integrity, and privacy...to the fullest extent possible consistent with maintaining and preserving the public's health and security." When there is a conflict between a rapid, effective response and individual liberties, individual liberties yield first.

Most of the powers under the act do not come into effect until the governor of a state declares a "public health emergency." A public health emergency is defined as an act of bioterrorism or "the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin...that poses a high probability" of death, disability, or substantial future harm to a large number of people. (For a list of diseases that physicians should report to public health authorities, see sidebar at above.)

The declaration of emergency must specify the nature of the emergency, the geographic areas subject to the declaration, and primary public health authority responding to the emergency (which probably will be the state health department). The period of emergency can be up to 30 days, subject to renewals as needed, and subject to termination by

Bad Bugs

The Model State Emergency Health Powers Act requires that physicians and other health-care providers report in writing or electronically to the public-health authority certain diseases listed by the federal government. The diseases are listed in 42 Code of Federal Regulations (CFR) section 72, Appendix A:

Viruses

1. Crimean-Congo hemorrhagic fever
2. Eastern Equine Encephalitis
3. Ebola
4. Equine Morbillivirus
5. Lassa fever
6. Marburg
7. Rift Valley fever
8. South American
9. Hemorrhagic fever (Junin, Machupo, Sabia, Flexal, Guanarito)
10. Tick-borne encephalitis complex viruses
11. Variola major (Smallpox)
12. Venezuelan Equine Encephalitis
13. Viruses causing hantavirus pulmonary syndrome
13. Yellow fever

Bacteria

1. Bacillus anthracis
2. Brucella abortus, B. melitensis, B. suis
3. Burkholderia (Pseudomonas) mallei
4. Burkholderia (Pseudomonas) pseudomallei
5. Clostridium botulinum
6. Francisella tularensis
7. Yersinia pestis

the governor or the state legislature.

Testing, vaccination, and quarantine

During the state of public health emergency, individuals can be ordered to submit to medical examination, testing, vaccination, and treatment. Under the proposed law, however, those procedures "must not be such as is reasonably likely to lead to serious harm to the affected individual."

If an individual refuses any of these procedures, the individual may be subject to isolation or quarantine if that is what is considered necessary to prevent the spread of disease. Under the act, "isolation" is the confinement of persons who are infected or are reasonably believed to be infected, and "quarantine" is the confinement of persons who have been exposed to the contagious disease, but do not show symptoms of the disease. The act provides that "Isolated individuals must be confined separately from quarantined individuals."

The power of the public health authority to confine an individual is immediate, and if an individual fails to obey a confinement order, the violation is punishable under criminal law as a misdemeanor. Unauthorized entry into a place of isolation or quarantine also

is punishable as a misdemeanor. A person objecting to confinement has a right to seek a court hearing, and such hearings generally will be held within 72 hours of the request. Courts also have the power to consolidate court hearings on requests for release, depending on the number of individuals involved and the degree to which the cases present common questions of law and fact.

A public health emergency may make it necessary to alter some of the usual protections of patients' medical records and other health information. Under the MSEHPA, the persons authorized to gain access to or disclosure of a patient's health information include epidemiologic researchers and federal authorities, as well as persons providing treatment to the individual and the individual's family members.

The model act also includes regulations on the "safe disposal of human remains." In order to prevent the spread of contagious diseases, a public health authority can order the disposal of human remains through cremation or burial within 24 hours of death. The act adds, "To the extent possible, religious, cultural, family, and individual beliefs of the deceased person or his family shall

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be considered when disposing of any human remains.”

Licensure and liability

A public health emergency is likely to increase the need for health-care providers to move quickly from state to state. Under the model law, the public health authority may waive the normal licensing and fee requirements for the duration of the emergency so that, for example, physicians and nurses licensed in one state can provide emergency service in another state without local licensure.

Health-care providers acting under this provision will be immune from civil damages in connection with medical care or treatment unless the provider's conduct demonstrates “a reckless disregard for the consequences so as to affect the life or health of the patient.” In other words, out-of-state health-care providers providing services during a declared public health emergency will not be liable for ordinary negligence in a medical malpractice case, although a provider could be liable for acts of gross negligence or reckless conduct.

The licensing provisions of the MSEHPA give the public health authority the power to order health-care providers within the state to assist in vaccination, treatment, examination, and testing of individuals. If a provider fails to do so, the provider's license can be suspended. (For discussion of a resolution by the AMA regarding bioterrorism, see the sidebar below.)

Control over facilities

The model act gives state public health authorities broad powers to take possession of and control health-care facilities, other buildings, and materials during the period of emergency. “Health-care facilities” include, but are not limited to, hospitals, long-term care facilities, ambulatory surgical centers, infirmaries, and adult day-care centers.

Physicians' offices are not specifically listed among the health-care facilities that can be taken over. The government probably would be reluctant to take possession of individual physicians' offices, but, under the act, the government appears to have the power to do so, including in extraordinary circumstances when other health-care

facilities are not available.

In addition, the MSEHPA gives the public health authority the power to control health-care supplies, food, fuel, clothing, and methods of transportation “as may be reasonable and necessary to respond to the public health emergency.” The purposes of such controls include rationing and inspecting for dangers. The act provides that “just compensation” shall be paid to the owner of facilities and materials that are taken and that courts shall be available to resolve disputes regarding the property.

Breadth of law

The Model State Emergency Health Powers Act is exceptionally broad. Given the fluid and variable nature of public-health emergencies, this is an area of law, more than most, in which it is not possible to draft a statute to cover all contingencies with precision or to strike a precise balance by statute between the needs of public welfare and the need to protect individual civil liberties. The act, on the whole, strikes appropriate balances and provides useful mechanisms of review for protection of individual rights.

The benefits of the act, as well as its potential dangers, will depend on the discretion exercised by those acting under the law. We can only hope that the need to test the workability of the act will not arise. ■

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AMA Sponsors International Resolution

The [American Medical Association \(AMA\)](#) has introduced a declaration before the [World Medical Association](#) condemning research, development, and use of biological weapons. The AMA declaration calls upon the World Medical Association and its constituent organizations to promote an international consortium of medical and public health leaders to:

- ✓ Monitor the threat of biological weapons
- ✓ Identify actions likely to prevent the proliferation of bioweapons
- ✓ Develop a plan for monitoring the worldwide emergence of infectious diseases

Timothy Flaherty, MD, the chair of the AMA, said, “Creating a global principle that rejects and stigmatizes the development of biological weapons is the first step toward preventing a potential epidemic that could overwhelm the capacities of most health systems in both the developing and industrialized world.”

The World Medical Association, headquartered in Ferney-Voltaire, France, represents national medical associations from 76 countries. The association is scheduled to vote on the AMA resolution at its annual meeting in October 2002 in Washington, DC. ■