

# The Model Emergency Health Powers Act: Why Is It Important Now?

*Two of the Model Act's authors address issues raised in a critique of the Act in the spring issue of Northwest Public Health.*

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Since the September 11 terrorist attacks and subsequent dispersal of anthrax, safeguarding the public's health and safety has been an increasing priority of federal, state, and local government officials. The potential for widespread bioterrorism and the risk of emerging infectious diseases have led government officials, particularly at the state and local levels, to reexamine their legal authorities and tools to plan for and respond to a public health emergency. In some states, existing laws authorizing public health responses to emergencies are insufficient. Developed over decades in response to specific disease threats, public health laws can be antiquated, inconsistent, and fragmented. They may fail to reflect modern constitutional standards or best practices in public health science. Many (including the Institute of Medicine, federal Department of Health and Human Services, and the Turning Point Public Health Statute Modernization Collaborative) suggest the need for public health law reform.

## The Model Act

In the weeks following the terrorist attacks, the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities drafted the Model State Emergency Health Powers Act (MSEHPA). The MSEHPA was prepared in collaboration with the Centers for Disease Control and Prevention and other national organizations representing governors, legislators, attorneys general, and state and local health authorities. It presents a model for states to use in considering specific needs for statutory reform to improve public health emergency preparation, detection, and response. Legislative bills based in whole or part on the Act have been introduced in 35 states (including Idaho, Washington, and Wyoming), enacted in 19 states, and are being considered elsewhere. A complete listing of legislative activity and the Model Act itself are available at the Center's Web site ([www.publichealthlaw.net](http://www.publichealthlaw.net)).

## Balancing communal and individual interests

An essential challenge in drafting the MSEHPA was to create a series of legal provisions that equip public health authorities with the necessary powers to respond to catastrophic public health emergen-

cies (including bioterrorism events) while also respecting individual and group rights. The Act vests state and local public health authorities with modern powers to track, prevent, and control disease threats. These powers include measures (e.g., testing, treatment, and vaccination programs; isolation or quarantine powers; and travel restrictions) that may interfere with individual civil liberties (e.g., rights to due process, speech, assembly, travel, and privacy). The exercise of these powers, however, is restricted in time, duration, and scope. Coercive public health powers, particularly isolation and quarantine, are exercised on a temporary basis, only so long as reasonably necessary, and only among persons who, because of their contagious condition, may pose risks to others. In addition, the dignity of individuals is respected. For example, their rights to contest the coercive use of public health powers, even during an emergency, are secured.

## Preparation, detection, and response

The Model Act enables state or local public health agencies to prepare for, detect, and respond to a public health emergency, defined as "an occurrence or imminent threat of an illness or health condition that:

- [a] 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; or [other causes, depending on state-specific definitions]; and
- [b] 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."

By creating a high threshold for governmental action, the Model Act protects individuals from unauthorized governmental actions that are not in response to serious and potentially catastrophic public health threats.

Public health authorities are authorized by the Act to immediately organize planning efforts

among multiple governmental sectors. Numerous, large-scale bioterrorism exercises and tabletop sessions have demonstrated the critical role of advanced planning. Planning helps public and private sectors coordinate their roles, leading to an effective public health response. Effective response also requires information. New disease reporting requirements for health care workers, pharmacists, and veterinarians can help public health authorities get timely information on suspect illnesses or trends in human or animal populations.

## Declaring and responding to a public health emergency

Under the Model Act the occurrence of a potential or actual public health emergency triggers a series of varied governmental powers. The powers are similar to those commonly employed by public health authorities outside of emergency settings. A state's governor is vested with the duty to declare a public health emergency subject to legislative and judicial review. Time constraints and other parameters surrounding a governor's authority to declare an emergency help protect the public's health while limiting potential abuses of power.

### *Managing private property*

Upon declaration of a public health emergency, public health and law enforcement authorities can manage public and private property. Numerous circumstances might require management of property in a public health emergency (e.g., decontamination of facilities; acquisition of vaccines, medicines, or hospital beds; or use of private facilities for isolation, quarantine, or disposal of human remains). In the 2001 anthrax attacks, for example, public health authorities had to close various public and private facilities for decontamination. Consistent with fair safeguards, including compensation for uses of private property for public purposes, clear legal authority is needed to manage property to contain a serious health threat.

### *Testing and vaccination*

To protect individuals from potentially catastrophic effects, public health authorities may set up medical testing, treatment, and vaccination programs. Although participation in testing, treatment, or vaccination programs is voluntary, those who choose not to participate and whose contagious condition may pose risks to others may be subject to isolation or quarantine measures. During a public health emergency, where potentially thousands of persons are exposed to or infected with a contagious disease, the use of

quarantine or isolation powers may be needed to protect groups, communities, or entire populations.

The Act respects the welfare and dignity of individuals through its quarantine and isolation measures. Public health authorities must: 1. use "the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others." Arbitrary or discriminatory quarantines will not satisfy this standard; 2. maintain safe, hygienic conditions for persons in isolation or quarantine that minimize the risk of further disease transmission; 3. provide adequate food, clothing, medication, health care, means of communication, and other necessities; and 4. adhere to strong due process protections for affected individuals.

Health care workers may play a critical role during a public health emergency. Accordingly, the Act provides strong incentives to encourage their participation. Private sector health care workers may be asked, but not compelled, to assist in public health programs. Public health authorities can condition future licensing status of in-state health care workers on their providing assistance (where possible) and waive licensing requirements for out-of-state health care workers who are willing to help.

## Conclusion

Preparing for bioterrorism events in the United States requires a strong national public health infrastructure. Federal, state, tribal, and local public health authorities must collaborate with law enforcement and emergency management personnel in preparedness planning and emergency response. Working to improve public health detection, prevention, and response capabilities requires effective training, additional resources, use of existing and new technologies, and public health law reform. Inadequacies in existing state public health laws fail to authorize, or may even thwart, effective public health action. Law reform is needed to improve public health planning, detection, and response capabilities.

The MSEHPA presents a modern statutory framework of public health powers that allows public health authorities to better plan, detect, manage, and control public health emergencies. The Act balances these powers against the need to safeguard individual rights and property interests. Legal reform may not be a panacea for the unforeseeable conflicts between individual and community interests that may arise during an emergency, but reform does present an opportunity for resolving in advance some of the difficult legal and ethical issues we face. 🐾

## Authors

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