

**LEGAL AUTHORITY OF THE STATE OF IOWA
TO PREVENT, DETECT, MANAGE AND CONTAIN
A PUBLIC HEALTH DISASTER**

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I. DEFINITIONS

A. Public Health Disaster.

i. Scope and Definition. This outline describes the legal authority of the State of Iowa, including the Iowa Department of Public Health and the Office of the Governor, in preparing for, preventing, detecting, managing and containing a public health disaster.

The term “public health disaster” has the following specific meaning in Iowa law:

"Public health disaster" means a state of disaster emergency proclaimed by the governor in consultation with the department pursuant to section 29C.6 for a disaster which specifically involves an imminent threat of an illness or health condition that meets both of the following conditions:

- (a) Is reasonably believed to be caused by any of the following:
 - (1) Bioterrorism or other act of terrorism.
 - (2) The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin.
 - (3) A chemical attack or accidental release.
 - (4) An intentional or accidental release of radioactive material.
 - (5) A nuclear or radiological attack or accident.
 - (6) A natural occurrence or incident, including but not limited to fire, flood, storm, drought, earthquake, tornado, or windstorm.
 - (7) A man-made occurrence or incident, including but not limited to an attack, spill, or explosion.

- (b) Poses a high probability of any of the following:
 - (1) A large number of deaths in the affected population.
 - (2) A large number of serious or long-term disabilities in the affected population.
 - (3) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of the affected population.
 - (4) Short-term or long-term physical or behavioral health consequences to a large number of the affected population.

(Iowa Code § 135.140(6)). Hence in order for a public health disaster to exist, there must be an imminent threat of an illness or health condition which is (1) caused by one

of the occurrences or incidents in subsection “a” AND (2) poses a high probability of a large number of deaths, serious or long term disabilities or illnesses, or substantial future harm or health consequences to a large number of persons.

ii. Examples.

-- Novel or previously controlled or eradicated diseases. By way of example, prior measles outbreaks in Iowa did not constitute a public health disaster, even though they involved the appearance of a previously eradicated disease in Iowa, because they did not pose a high probability of a large number of deaths or disabilities in the affected population. However, had an outbreak spread in an unvaccinated and vulnerable population, a public health disaster may have been declared.

An outbreak of a previously eradicated disease with a higher morbidity or mortality rate, such as smallpox or polio, could constitute cause to declare a public health disaster. In addition, an outbreak of a novel disease -- such as a novel strain of the coronavirus, avian, or swine influenza which is transmissible human to human -- may constitute cause to declare a public health disaster.

-- Terrorism. An intentional attack or release of a biologic, chemical, nuclear, or radiological agent which affects a large number of Iowans could constitute cause to declare a public health disaster.

-- Major mass casualty accidents or incidents. An intentional or accidental release or explosion of a biologic, chemical, nuclear, or radiological agent which affects a large number of Iowans could constitute cause to declare a public health disaster.

B. Bioterrorism. The public health disaster legislation defines bioterrorism as “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 other biological malfunction in a human, an animal, a plant, or another living organism.” (Iowa Code §135.140(1))

II. PREVENTION OF AND PREPARATION FOR A PUBLIC HEALTH DISASTER

A. Division of Acute Disease Prevention and Emergency Response.

i. **Establishment of Division.** In 2003, the legislature specifically established a division within IDPH to coordinate public health disaster preparedness efforts, now titled the Division of Acute Disease Prevention and Emergency Response and Environmental Health. (Iowa Code § 135.141).

ii. Duties of Division and Department. The Division is expressly charged with coordinating the administration of the public health disaster laws with other divisions of the IDPH and with other federal, state, and local agencies and officials. In addition, the Department is specifically charged with the duty to:

- (1) Coordinate with the department of homeland security and emergency management the administration of emergency planning matters which involve the public health, including development, administration, and execution of the public health components of the comprehensive plan and emergency management program pursuant to section 29C.8.
- (2) Coordinate with federal, state, and local agencies and officials, and private agencies, organizations, companies, and persons, the administration of emergency planning matters that involve the public health.
- (3) If a public health disaster exists, or if there is reasonable cause to believe that a public health disaster is imminent, conduct a risk assessment of any present or potential danger to the public health from chemical, radiological, or other potentially dangerous agents.
- (4) For the purpose of paragraph 3, an employee or agent of the department may enter into and examine any premises containing potentially dangerous agents with the consent of the owner or person in charge of the premises or, if the owner or person in charge of the premises refuses admittance, with an administrative search warrant obtained under section 808.14. Based on findings of the risk assessment and examination of the premises, the director may order reasonable safeguards or take any other action reasonably necessary to protect the public health pursuant to rules adopted to administer this subsection.
- (5) Coordinate the location, procurement, storage, transportation, maintenance, and distribution of medical supplies, drugs, antidotes, and vaccines to prepare for or in response to a public health disaster, including receiving, distributing, and administering items from the strategic national stockpile program of the centers for disease control and prevention of the United States department of health and human services.

Note: Consistent with this authority, IDPH has developed a strategic national stockpile (SNS) response plan, which includes all elements of the response from requesting the stockpile to distributing and administering the stockpile. Questions regarding the SNS should be directed to IDPH's SNS Officer.

- (6) Conduct or coordinate public information activities regarding emergency and disaster planning matters that involve the public health.
- (7) Apply for and accept grants, gifts, or other funds to be used for programs authorized by this division of this chapter.
- (8) Establish and coordinate other programs or activities as necessary for the prevention, detection, management, and containment of public health disasters, and for the recovery from such disasters.
- (9) Adopt rules pursuant to chapter 17A for the administration of this division of this chapter including rules adopted in cooperation with the Iowa pharmacy association and the Iowa hospital association for the development of a surveillance system to monitor supplies of drugs, antidotes, and vaccines to assist in detecting a potential public health disaster. Prior to adoption, the rules shall be approved by the state board of health and the administrator of the homeland security and emergency management division of the department of public defense.

B. Health Care Supplies -- ability to purchase, distribute, control, and procure. IDPH is authorized to “purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies as deemed advisable in the interest of preparing for or controlling a public health disaster.” (Iowa Code §135.142(1)).

In addition, if a public health disaster exists or one is imminent and such disaster or belief results in a statewide shortage of any of these products, whether or not they have been purchased by the department, IDPH may “control, restrict, and regulate by rationing and the use of quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of the relevant product necessary to protect the public health, safety, and welfare of the people of this state.” IDPH must collaborate with persons who have control of the products when “reasonably

possible,” and must give preference to health care providers, disaster response personnel, and mortuary staff in its decision-making process. (Iowa Code § 135.142(2))

Finally, if a public health disaster exists, IDPH may “procure, store, or distribute any antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies located within the state as may be reasonable and necessary to respond to the public health disaster, and may take immediate possession of these pharmaceutical agents and supplies.” (Iowa Code § 135.142(4)).

Compensation must be paid to the owner of any product lawfully taken or appropriated in an amount limited to the costs incurred by the owner to procure the item. (Iowa Code § 135.142(5)).

C. Public Health Response Teams.

i. Scope and Definition. IDPH is authorized to register and deploy “public health response teams” to supplement and support disrupted or overburdened local medical and public health personnel, hospitals, and resources, in the event of a disaster or other significant event. (Iowa Code § 135.143) A “public health response team” means a “team of professionals, including licensed health care providers, nonmedical professionals skilled and trained in disaster or emergency response, and public health practitioners, which is sponsored by a hospital or other entity and approved by the department to provide disaster medical assistance in the event of a disaster or threatened disaster.” (Iowa Code § 135.140(7))

IDPH has a process in place to register and deploy the following types of public health response teams: (1) disaster medical assistance team (DMAT); (2) environmental health response team (EHRT); (3) Iowa mortuary operational response team (IMORT); and (4) logistical support response team (LSRT). Administrative rules further defining the teams and their duties are contained at 641 IAC chapter 113.

ii. Deployment. Public health response teams may be deployed in any of the following circumstances:

- (1) At or near the site of a disaster or threatened disaster by providing direct medical care to victims or providing other support services.
- (2) If local medical or public health personnel or hospitals request the assistance of a public health response team to provide direct medical care to victims or to provide other support services in relation to any of the following incidents:
 - (a) During an incident resulting from a novel or previously

controlled or eradicated infectious agent, disease, or biological toxin.

- (b) After a chemical attack or accidental chemical release.
- (c) After an intentional or accidental release of radioactive material.
- (d) In response to a nuclear or radiological attack or accident.
- (e) Where an incident poses a high probability of a large number of deaths or long-term disabilities in the affected population.
- (f) During or after a natural occurrence or incident, including but not limited to fire, flood, storm, drought, earthquake, tornado, or windstorm.
- (g) During or after a man-made occurrence or incident, including but not limited to an attack, spill, or explosion.

(Iowa Code § 135.143(1))

Hence the teams may be deployed to respond to an incident that does not meet the definition of a disaster or public health disaster but yet has disrupted or overburdened local providers and local public health.

iii. Legal Protections. The team members who act in accordance with chapter 135 are treated as state employees for purposes of tort liability, worker's compensation, and death and disability benefits. The statute specifically provides as follows:

A member of a public health response team acting pursuant to chapter 135 shall be considered an employee of the state under section 29C.21 and chapter 669, shall be afforded protection as an employee of the state under section 669.21, and shall be considered an employee of the state for purposes of workers' compensation, disability, and death benefits, provided that the member has done all of the following:

- (1) Registered with and received approval to serve on a public health response team from the department.
- (2) Provided direct medical care or other support services during a disaster, threatened disaster, or other incident described above; or participated in a training exercise to prepare for a disaster or other incident described above.

(Iowa Code § 135.143(2))

iv. EMAC. The public health response team legislation also provides that registered team members will be considered state employees for purposes of the Emergency Management Assistance Compact (“EMAC”). (Iowa Code §135.143(3)). This means that registered team members may be deployed to an out-of-state disaster situation under EMAC. When deployed, the team members will be considered agents of the requesting state for purposes of tort liability and immunity, which requires the requesting state to provide legal defense and indemnification to the Iowa team member. (Iowa Code § 29C.21, Article VI). The team member would also be entitled to workers compensation and other benefits if injured or killed, in the same manner and on the same terms as if the member were a state of Iowa employee. (Iowa Code § 29C.21, Article VIII).

D. Vaccine Shortages. In the event of a vaccine shortage, or in the event a shortage is imminent, IDPH “may issue an order controlling, restricting, or otherwise regulating the distribution and administration of the vaccine. The order may designate groups of persons which shall receive priority in administration of the vaccine and may prohibit vaccination of persons who are not included in a priority designation. The order shall include an effective date, which may be amended or rescinded only through a written order of the department. The order shall be applicable to health care providers, hospitals, clinics, pharmacies, health care facilities, local boards of health, public health agencies, and other persons or entities that distribute or administer vaccines.” (Iowa Code § 139A.8A).

III. DETECTION OF A PUBLIC HEALTH DISASTER

A. Disease Reporting.

i. Every Iowa-licensed health care provider (including physicians, physician assistants, chiropractors, podiatrists, nurses, dentists, dental hygienists, optometrists, and acupuncturists), and all private and hospital clinical laboratories have a duty to report to IDPH all cases of “reportable diseases.” (Iowa Code § 139A.3, 641 IAC chapter 1).

ii. “Reportable diseases” include:

(1) All diseases and conditions designated in 641 IAC chapter 1. (641 IAC 1.3, Appendices A and B). The director may also designate any disease, poisoning, condition, or syndrome temporarily reportable for the purpose of a special investigation.

(2) In addition, the rules require immediate reporting to IDPH at

(800) 362-2736 of:

- (a) Diseases, syndromes, poisonings and conditions of any kind suspected or caused by a biological, chemical, or radiological agent or toxin when the provider reasonably believes or suspects that the disease, syndrome, poisoning or condition may be the result of a deliberate act such as terrorism -- including ricin, tularemia, smallpox, mustard gas or sarin gas; (641 IAC chapter 1, Appendix A)
- (b) Any outbreak of any kind, diseases that occur in unusual numbers or circumstances, unusual syndromes, or uncommon diseases. Outbreaks may be infectious, environmental or occupational in origin and include food-borne outbreaks or illness secondary to chemical exposure – including pesticides or anhydrous ammonia; (641 IAC chapter 1, Appendix A)
- (c) All quarantinable diseases, including any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread, including but not limited to cholera; diphtheria; infectious tuberculosis; plague; smallpox; yellow fever; viral hemorrhagic fevers, including Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named; and severe acute respiratory syndrome (SARS). (641 IAC 1.1, Appendix A)

B. Disease Investigation. IDPH is authorized to “make investigations and surveys in respect to the causes of diseases and epidemics.” (Iowa Code § 135.11(4)). Every health care provider and laboratory has a legal duty to assist in any disease investigation undertaken by IDPH, a local board of health, or a local health department. (Iowa Code § 139A.3; 641 IAC 1.7).

i. “*Investigation*” means an inquiry conducted to determine the specific source, mode of transmission, and cause of a disease or suspected disease occurrence and to determine the specific incidence, prevalence, and extent of the disease in the affected population. “Investigation” may also include the application of scientific methods and analysis to institute appropriate control measures.” (641 IAC 1.1)

ii. A health care provider and laboratory’s duty to assist in the investigation includes providing “the department, local board, or local department with all information necessary to conduct the investigation, including but not limited to medical records; exposure histories; medical histories; contact information; and test results necessary to the investigation, including positive, pending, and negative test results.” (Iowa Code § 139A.3(3); 641 IAC 1.7(1))

iii. In addition to the ability to obtain records from health care providers and laboratories upon request, IDPH may also subpoena records, reports, and any other evidence necessary to conduct a disease investigation from “other persons, facilities, and entities.” (Iowa Code § 139A.3(3)). The process for issuing an investigatory subpoena in a reportable disease investigation is contained at 641 IAC 1.7(2).

iv. **Confidentiality of disease outbreak investigation information.** Iowa Code section 139A.3(2)(b) provides that information regarding disease investigations “provided to or maintained by the department, a local board, or a local department, which identifies a person infected with or exposed to a reportable or other disease or health condition, is confidential and shall not be accessible to the public.” See *a/so* Iowa Code § 22.7(16).

This law further provides in section (c) that when the Department and local boards share information about a disease investigation with the public they must do so “in a manner which prevents the identification of any person or business” involved in the investigation. A business name can be released to the public only when the state epidemiologist or the director of the Department “determines such a release of information necessary for the protection of the health of the public.” Local boards cannot make the determination independently to release the name of a business, that decision rests with the state epidemiologist and the Department director.

With respect to individuals, the Department follows its established policy regarding release of confidential information to ensure it does not identify persons involved in a disease investigation in a manner which would violate section 139A.3.

C. HIPAA. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule expressly permits covered entities to report disease, injury, health conditions, and poisonings to IDPH and to cooperate in public health investigations **without obtaining consent or authorization from the patient.** First, although the requirements of HIPAA generally preempt state law, HIPAA provides for certain exceptions to this general preemption rule. One such exception applies when state statute and state administrative rules provide for the reporting of disease or injury, . . . or for the conduct of public health surveillance, investigation, or intervention. @ 45 CFR 160.203. Iowa Code chapters 135 and 139A and 641 Iowa Administrative Code chapter 1 require health care providers and laboratories to report all cases of reportable diseases to IDPH (including all diseases and conditions, syndromes, occupationally related conditions, agriculturally related injuries, and poisonings listed in 641 IAC chapter 1 and identified above). These provisions of law are not preempted by HIPAA and therefore the reporting of this information does not require prior consent or authorization.

HIPAA also provides for a number of **permitted disclosures**, i.e. those disclosures of protected health information for which consent or authorization is **not** required. HIPAA authorizes such disclosures to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. 45 CFR 164.512(a). HIPAA further authorizes disclosures for public health activities to a public health authority that is authorized by law to collect or receive such information for the purposes of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.] 45 CFR 164.512(b)(1)(i). Hence, HIPAA does not require that covered entities obtain consent or authorization prior to releasing reportable disease information to IDPH.

Summary note: HIPAA provides no legal basis for health care providers or laboratories to refuse to notify IDPH or local health departments of reportable conditions, nor does HIPAA provide a legal basis for health care providers or laboratories to refuse to cooperate with IDPH or local health departments in the course of disease investigations, follow-up, or surveillance. Disclosures of reportable disease information are legally required and must continue to occur as mandated by state law.

D. Information from Law Enforcement. Iowa law requires law enforcement officials to notify IDPH of certain diseases or events which could be the cause of a public health disaster. The statute specifically provides as follows:

When the department of public safety or other federal, state, or local law enforcement agency learns of a case of a disease or health condition, unusual cluster, or a suspicious event that may be the cause of a public health disaster, the department or agency shall immediately notify the department, the director of the department of homeland security and emergency management, the department of agriculture and land stewardship, and the department of natural resources as appropriate.

Public health officials should note that IDPH also has a corresponding duty to notify law enforcement of diseases or events of a similar nature:

When the department learns of a case of a disease or health condition, an unusual cluster, or a suspicious event that may be the cause of a public health disaster, the department shall immediately notify the department of public safety, the department of homeland security and emergency management, and other appropriate federal, state, and local agencies and officials.

(Iowa Code § 135.145)

When IDPH does share information with law enforcement, it is limited to “sharing only the information necessary for the prevention, control, and investigation of a public health disaster.” (Iowa Code § 135.145(3)).

E. Summary. IDPH officials can generally exercise broad public health legal authorities to detect and control a communicable disease outbreak without declaring a public health disaster, including:

- Receiving and maintaining reportable disease information
- Conducting disease investigations
- Providing public health education and advice
- Issuing public health bulletins and orders
- Imposing and enforcing quarantine, isolation, and area quarantine
- Purchasing and distributing antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies
- Registering and deploying public health response teams

Upon declaration of a public health disaster, IDPH and the Governor may exercise additional legal authorities as outlined in Section V.

IV. DECLARING A PUBLIC HEALTH DISASTER

Declaration. The Governor of the State of Iowa must proclaim a public health disaster in accordance with Iowa Code section 29C.6 in order for IDPH to take any of the actions outlined in section V, with the exception of quarantine and isolation, which will be discussed further below. The Governor’s proclamation must be in writing, indicate the area affected and the facts upon which it is based, and be signed by the Governor and filed with the Secretary of State. The written proclamation must include a statement that the state of disaster emergency specifically constitutes a public health disaster as defined in Iowa Code section 135.140. (Iowa Code § 29C.6(1)).

V. MANAGING AND CONTAINING A PUBLIC HEALTH DISASTER

A. Authority of IDPH In the Event of a Public Health Disaster. If a public health disaster exists, the department, in conjunction with the governor, may do any of the following:

i. Decontaminate. Decontaminate or cause to be decontaminated, to the extent reasonable and necessary to address the public health disaster, any facility or material if there is cause to believe the contaminated facility or material may endanger

the public health. (Iowa Code § 135.144(1))

ii. Identify and Dispose of Human Remains. Adopt and enforce measures to provide for the identification and safe disposal of human remains, including performance of postmortem examinations, transportation, embalming, burial, cremation, interment, disinterment, and other disposal of human remains. To the extent possible, religious, cultural, family, and individual beliefs of the deceased person or the deceased person's family shall be considered when disposing of any human remains. (Iowa Code § 135.144(2))

iii. Prevent, Control, and Treat Infectious Disease. Take reasonable measures as necessary to prevent the transmission of infectious disease and to ensure that all cases of communicable disease are properly identified, controlled, and treated. (Iowa Code § 135.144(3))

iv. Control and Treat Contamination. Take reasonable measures as necessary to ensure that all cases of chemical, biological, and radiological contamination are properly identified, controlled, and treated. (Iowa Code § 135.144(4))

v. Order Physical Examinations and Testing. Order physical examinations and tests and collect specimens as necessary for the diagnosis or treatment of individuals, to be performed by any qualified person authorized to do so by the department. An examination or test shall not be performed or ordered if the examination or test is reasonably likely to lead to serious harm to the affected individual. The department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any individual whose refusal of medical examination or testing results in uncertainty regarding whether the individual has been exposed to or is infected with a communicable or potentially communicable disease or otherwise poses a danger to public health. (Iowa Code § 135.144(5))

vi. Order Vaccination. Vaccinate or order that individuals be vaccinated against an infectious disease and to prevent the spread of communicable or potentially communicable disease. Vaccinations shall be administered by any qualified person authorized to do so by the department. The vaccination shall not be provided or ordered if it is reasonably likely to lead to serious harm to the affected individual. To prevent the spread of communicable or potentially communicable disease, the department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any person who is unable or unwilling to undergo vaccination pursuant to this subsection. (Iowa Code § 135.144(6))

vii. Order Treatment. Treat or order that individuals exposed to or infected with disease receive treatment or prophylaxis. Treatment or prophylaxis shall be

administered by any qualified person authorized to do so by the department. Treatment or prophylaxis shall not be provided or ordered if the treatment or prophylaxis is reasonably likely to lead to serious harm to the affected individual. To prevent the spread of communicable or potentially communicable disease, the department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any individual who is unable or unwilling to undergo treatment or prophylaxis pursuant to this section. (Iowa Code §135.144(7))

viii. Order Isolation and Quarantine. Isolate or quarantine individuals or groups of individuals pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter. (Iowa Code §135.144(8)).

Note: While section 135.144 provides IDPH with the authority to quarantine and isolate during a public health disaster, IDPH possesses independent legal authority to isolate or quarantine individuals or groups of individuals in the event of an outbreak of any quarantinable disease, even if the outbreak is not serious enough to constitute a public health disaster. (Iowa Code § 139A.4). The process IDPH follows to implement and enforce quarantine and isolation, outlined below, is the same regardless of whether a public health disaster has been declared.

- (1) **Definition of Quarantine and Isolation.** It is important for public health officials to understand the distinction between isolation and quarantine and to use the terms appropriately. Under Iowa law, isolation is the separation of persons who are showing symptoms of the disease, while quarantine is the separation of persons who have been exposed to the disease. The terms are specifically defined as follows:

“Isolation” means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease. Isolation shall be in such places, marked by placards if necessary, and under such conditions to prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible individuals.

“Quarantine” means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease, within specified limits marked by placards, for a period of time equal to the longest usual incubation period of the disease. The limitation of movement shall be in such manner as to prevent the spread of a communicable disease.

(Iowa Code § 139A.2(15) & (21), 641 IAC 1.1)

IDPH and local boards also have the authority to impose area quarantine, which is defined as follows:

“Area quarantine” means prohibiting ingress and egress to and from a building or buildings, structure or structures, or other definable physical location, or portion thereof, to prevent or contain the spread of a suspected or confirmed quarantinable disease or to prevent or contain exposure to a suspected or known chemical, biological, radioactive, or other hazardous or toxic agent.”

(Iowa Code § 139A.2(1), 641 IAC 1.1). IDPH has adopted administrative rules to outline the process for imposing and enforcing area quarantine which may be found at 641 IAC 1.13.

(2) Authority to Quarantine and Isolate – federal, state, and local.

Under Iowa law, both IDPH and local boards of health are authorized to impose and enforce quarantine and isolation and area quarantine. (Iowa Code § 139A.4(2) and (4); 641 IAC 1.9(2)“b”).

Quarantine and isolation undertaken by a local board of health must be accomplished according to the local board’s rules and must be consistent with the process contained in this outline. Many local boards of health have adopted IDPH’s model rules for quarantine and isolation by reference. (641 IAC 1.12). Quarantine and isolation undertaken by IDPH must follow the process detailed in 641 IAC 1.9 and discussed in this section of the outline.

Due to the dual authority, jurisdictional issues may arise when considering which entity should have responsibility for implementing and enforcing a quarantine or isolation. Iowa law provides that IDPH has “primary jurisdiction to isolate or quarantine individuals or groups of individuals if the communicable disease outbreak has affected more than one county or has multicounty, statewide, or interstate public health implications. When imposing isolation or quarantine, the department shall coordinate with the local health department as appropriate. If isolation or quarantine is imposed by the department, a local board of health or local health department may not alter, amend, modify, or rescind the isolation or quarantine order.” (641 IAC 1.9(10))

Public health officials should also be aware that the federal government, through the Centers for Disease Control (CDC), also has the legal authority to quarantine when there is a risk of transmission of the quarantinable disease across state lines, when

requested by state or local authorities, or if the CDC believes that local efforts to control the disease are inadequate. (42 USCA Section 264a; 42 USCA Section 70.2).

(3) **Voluntary Confinement.** Prior to or in lieu of instituting mandatory quarantine or isolation, IDPH or a local board of health “may request that an individual or group of individuals voluntarily confine themselves to a private home or other facility.” (641 IAC 1.9(2)(a)). Voluntary home confinement with self-monitoring is generally the least restrictive means of limiting further exposure to the disease and is under most circumstances IDPH’s primary and preferred disease containment measure for quarantinable diseases. If an individual fails to comply with voluntary home confinement, IDPH may obtain a mandatory and involuntary quarantine or isolation order subjecting the individual to quarantine or isolation in their home or in a facility.

(4) **Process for Quarantine and Isolation.**

(a) **Who may issue quarantine or isolation order.** IDPH may enforce quarantine and isolation through the Director of IDPH, IDPH’s Medical Director, or the Director or Medical Director’s designee. (641 IAC 1.9(6)(a)). Hence any oral order must be verbally issued by the Director or Medical Director or designee, and any written order must be signed by the Director or Medical Director or designee.

(b) **Process for issuing order.**

(i) **Oral order.** IDPH may temporarily isolate or quarantine an individual or groups of individuals through “an oral order, without notice, only if delay in imposing the isolation or quarantine would significantly jeopardize the department’s ability to prevent or limit the transmission of a communicable or possibly communicable disease to others. If the department imposes temporary isolation or quarantine of an individual or groups of individuals through an oral order, the department shall issue a written order as soon as is reasonably possible and in all cases within 24 hours of issuance of the oral order if continued isolation or quarantine is necessary to prevent or limit the transmission of a communicable or possibly communicable disease.” (641 IAC 1.9(6)(b))

(ii) **Written order.** If sufficient time is available, IDPH will quarantine or isolate only after issuing a written order.

1) **Content.** A written order must include:

- a) The identity of the individual, individuals, or groups of individuals subject to isolation or quarantine.
- b) The premises subject to isolation or quarantine.
- c) The date and time at which isolation or quarantine commences.
- d) The suspected communicable disease.
- e) A description of the less restrictive alternatives that were attempted and were unsuccessful, or the less restrictive alternatives that were considered and rejected, and the reasons such alternatives were rejected.
- f) A statement of compliance with the conditions and principles for isolation and quarantine specified in subrule 1.9(3).
- g) The legal authority under which the order is requested.
- h) The medical basis upon which isolation or quarantine is justified.
- i) A statement advising the individual, individuals, or groups of individuals of the right to appeal the written order pursuant to subrule 1.9(7) and the rights of individuals and groups of individuals subject to quarantine and isolation as listed in subrule 1.9(8).
- j) A copy of this chapter and the relevant definitions of this rule.

(641 IAC 1.9(6)(c)).

2) **Service.** A copy of the written order must be “provided to the individual to be isolated or quarantined within 24 hours of issuance of the order in accordance with any applicable process authorized by the Iowa Rules of Civil Procedure.” (641 IAC 1.9(6)(c)(2)). Service of the order should either be accomplished by personal service or restricted certified mail, return receipt requested. In either case, public health officials should inform the individual providing service of the nature of the disease and ensure that such person has taken all reasonable measures to reduce the risk of transmission. For example, IDPH requested

the assistance of local law enforcement to serve the quarantine orders issued during the measles outbreak in 2004, but first made sure that the officers involved had received all required doses of the measles vaccine. The rules further provide that “if the order applies to a group or groups of individuals and it is impractical to provide individual copies, the order may be posted in a conspicuous place in the isolation or quarantine premises.” (641 IAC 1.9(6)(c)(2))

(5) **Conditions and Principles of Quarantine and Isolation.** IDPH and local boards of health must follow the following conditions and principles when quarantining or isolating individuals or groups of individuals:

- (a) The isolation or quarantine shall be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but not be limited to, confinement to private homes, other private premises, or public premises.
- (b) Isolated individuals shall be confined separately from quarantined individuals.
- (c) The health status of isolated or quarantined individuals shall be monitored regularly to determine if the individuals require further or continued isolation or quarantine.
- (d) If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease, the individual shall be promptly removed to isolation.
- (e) Isolated or quarantined individuals shall be immediately released when the department or local board of health determines that the individuals pose no substantial risk of transmitting a communicable or possibly communicable disease.
- (f) The needs of isolated or quarantined individuals shall be addressed in a systematic and competent fashion including, but not limited to, providing adequate food; clothing; shelter; means of communicating with those in and outside of isolation or quarantine; medication; and

competent medical care.

(g) The premises used for isolation or quarantine shall be maintained in a safe and hygienic manner and shall be designed to minimize the likelihood of further transmission of infection or other harm to isolated or quarantined individuals.

(h) To the extent possible, cultural and religious beliefs shall be considered in addressing the needs of individuals in isolation or quarantine premises and in establishing and maintaining the premises.

(641 IAC 1.9(3))

(6) **Quarantine and Isolation Premises.** Upon issuance of a quarantine or isolation order, IDPH may “prominently placard” the site with signs prescribed by IDPH if placarding is deemed appropriate by IDPH. If posted, the signs must be posted on all sides of the building where access to the building is possible. (Iowa Code section 139A.5; 641 IAC 1.9(4)(a)). Reportable disease information may be included in a quarantine or isolation order or placard as necessary to protect the spread of the disease. (641 IAC 1.17(3)). An individual subject to a quarantine or isolation order must obey the order and “shall not go beyond the isolation or quarantine premises,” and no individual other than one authorized by IDPH or a local board may enter the quarantine or isolation premises. (641 IAC 1.9(4)(b), (d)). However, IDPH or a local board may “authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.” (641 IAC 1.9(4)(c)).

If IDPH has requested the assistance of law enforcement in enforcing the isolation or quarantine, the department shall provide law enforcement personnel with a list of individuals authorized to enter the isolation or quarantine premises.” (641 IAC 1.9(4)(d)). “Any individual entering an isolation or quarantine premises with or without authorization of the department or a local board of health may be isolated or quarantined.” (641 IAC 1.9(4)(e)).

(7) **Due process.**

(a) **Appeal Rights.** The subject of a quarantine or isolation order has the right to appeal such order to the Director of IDPH or, in certain

cases, directly to district court, in accordance with 641 IAC 1.9(7). All hearings must be held as soon as is practicable, and in no case later than 10 days after receipt of the appeal. The hearings may be by telephonic or other electronic means if necessary to prevent additional exposure to the disease. The hearing shall be closed to the public at the discretion of the subject of the order. If the hearing is closed to the public, IDPH's final decision shall redact information which could lead to the identification of the subject of the order.

- (b) **Other rights.** Any individual or group of individuals subject to isolation or quarantine shall have the following rights:
 - (i) The right to be represented by legal counsel.
 - (ii) The right to be provided with prior notice of the date, time, and location of any hearing.
 - (iii) The right to participate in any hearing. The hearing may be held by telephonic or other electronic means if necessary to prevent additional exposure to the communicable or possibly communicable disease.
 - (iv) The right to respond and present evidence and argument on the individual's own behalf in any hearing.
 - (v) The right to cross-examine witnesses who testify against the individual.
 - (vi) The right to view and copy all records in the possession of the department which relate to the subject of the written order.

(641 IAC 1.9(8))

- (8) **Implementation and Enforcement.** If IDPH has imposed the quarantine or isolation, "the local boards of health and the local health departments in the affected areas shall assist in the implementation of the isolation or quarantine order." In addition, pursuant to Iowa Code section 135.35, "all peace officers of the state shall enforce and execute a lawful department order for isolation or quarantine within their respective jurisdictions. The department shall take all reasonable measures to minimize the risk

of exposure to peace officers and others assisting with enforcement of an isolation or quarantine order.” (641 IAC 1.9(10)(c)). The penalty for violation of a quarantine or isolation order is a simple misdemeanor subject to fines of up to \$ 625 and imprisonment not to exceed 30 days. (Iowa Code § 135.38; 641 IAC 1.9(10)(d); Iowa Code § 903.1)

- (9) **Employment Protections.** Iowa law provides that an “employer shall not discharge an employee, or take or fail to take action regarding an employee’s promotion or proposed promotion, or take action to reduce an employee’s wages or benefits for actual time worked, due to the compliance of an employee with a quarantine or isolation order or voluntary confinement request issued by the department, a local board, or the centers for disease control and prevention of the United States department of health and human services. (Iowa Code § 139A.13A).

ix. Inform Public. Inform the public when a public health disaster has been declared or terminated, about protective measures to take during the disaster, and about actions being taken to control the disaster. (Iowa Code § 135.144(9))

x. Accept Grants and loans. Accept grants and loans from the federal government pursuant to section 29C.6 or available provisions of federal law. (Iowa Code § 135.144(10))

xi. Provide Financial Assistance. If a public health disaster or other public health emergency situation exists which poses an imminent threat to the public health, safety, and welfare, the department, in conjunction with the governor, may provide financial assistance, from funds appropriated to the department that are not otherwise encumbered, to political subdivisions as needed to alleviate the disaster or the emergency. If the department does not have sufficient unencumbered funds, the governor may request that the executive council, pursuant to the authority of section 7D.29, commit sufficient funds, up to one million dollars, that are not otherwise encumbered from the general fund, as needed and available, for the disaster or the emergency. If additional financial assistance is required in excess of one million dollars, approval by the legislative council is also required. (Iowa Code § 135.144(11)).

xii. Reassign Department Employees. Temporarily reassign department employees for purposes of response and recovery efforts, to the extent such employees consent to the reassignments. (Iowa Code § 135.144(12)).

xiii. Closure of Schools. Order, in conjunction with the department of education, temporary closure of any public school or nonpublic school, as defined in section 280.2, to prevent or control the transmission of a communicable disease as

defined in section 139A.2. (Iowa Code § 135.144(13)).

xiv. Health Care Supplies. IDPH is authorized to purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies to prepare for or control a public health disaster.

If a public health disaster exists or there is reasonable cause to believe that a public health disaster is imminent and if the public health disaster or belief that a public health disaster is imminent results in a statewide or regional shortage or threatened shortage of any product described [above], whether or not such product has been purchased by the department, the department may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of the relevant product necessary to protect the public health, safety, and welfare of the people of this state. The department shall collaborate with persons who have control of the products when reasonably possible. In making rationing or other supply and distribution decisions, the department shall give preference to health care providers, disaster response personnel, and mortuary staff.

During a public health disaster, the department may procure, store, or distribute any antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies located within the state as may be reasonable and necessary to respond to the public health disaster, and may take immediate possession of these pharmaceutical agents and supplies. If a public health disaster affects more than one state, this section shall not be construed to allow the department to obtain antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies for the primary purpose of hoarding such items or preventing the fair and equitable distribution of these pharmaceutical and medical supplies among affected states. The department shall collaborate with affected states and persons when reasonably possible.

The state shall pay just compensation to the owner of any product lawfully taken or appropriated by the department for the department's temporary or permanent use in accordance with this section. The amount of compensation shall be limited to the costs incurred by the owner to procure the item.

(Iowa Code § 135.142).

B. Additional Authority of the Governor in the Event of a Public Health

Disaster. In addition to those duties cited above, in the event of a public health disaster the Governor may also:

i. Remove Debris and Wreckage. [T]hrough the use of state agencies or the use of any of the political subdivisions of the state, clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety or public or private property. The governor may accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water. Authority shall not be exercised by the governor unless the affected local government, corporation, organization or individual shall first present an additional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, such corporation, organization or individual shall first agree to hold harmless the state or local government against any claim arising from such removal. When the governor provides for clearance of debris or wreckage, employees of the designated state agencies or individuals appointed by the state may enter upon private land or waters and perform any tasks necessary to the removal or clearance operation. Any state employee or agent complying with orders of the governor and performing duties pursuant to such orders under this chapter shall be considered to be acting within the scope of employment within the meaning specified in chapter 669. (Iowa Code § 29C.6(4))

ii. Suspend Statutes and Rules. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules, of any state agency, if strict compliance with the provisions of any statute, order or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency by stating in a proclamation such reasons. Upon the request of a local governing body, the governor may also suspend statutes limiting local governments in their ability to provide services to aid disaster victims. (Iowa Code § 29C.6(6))

iii. Utilize Available State Resources. Utilize all available resources of the state government as reasonably necessary to cope with the disaster emergency and of each political subdivision of the state. (Iowa Code § 29C.6(10))

iv. Transfer Personnel and Duties of State Agencies. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management. (Iowa Code § 29C.6(11))

v. Commandeer and Utilize Private Property. Subject to any applicable requirements for compensation, commandeer or utilize any private property if the governor finds this necessary to cope with the disaster emergency. (Iowa Code § 29C.6(12))

vi. Direct Evacuation. Direct the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery. (Iowa Code § 29C.6(13). Prescribe routes, modes of transportation, and destinations in connection with evacuation. (Iowa Code § 29C.6(14))

vii. Control Movement of Persons. Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises in such area. (Iowa Code § 29C.6(15))

viii. Suspend Sales of Certain Products. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. (Iowa Code § 29C.6(16))

ix. Accept Grants from Federal Government. When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of local and state government adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund the financial assistance, subject to terms and conditions imposed upon the grant, and enter into an agreement with the federal government pledging the state to participate in the funding of the financial assistance authorized to local government and eligible private nonprofit agencies in an amount not to exceed ten percent of the total eligible expenses, with the applicant providing the balance of any participation amount. If financial assistance is granted by the federal government for state disaster-related expenses or serious needs, the state shall participate in the funding of the financial assistance authorized in an amount not to exceed twenty-five percent of the total eligible expenses. If financial assistance is granted by the federal government for hazard mitigation, the state may participate in the funding of the financial assistance authorized to a local government in an amount not to exceed ten percent of the eligible expenses, with the applicant providing the balance of any participation amount. If financial assistance is granted by the federal government for state-related hazard mitigation, the state may participate in the funding of the financial assistance authorized, not to exceed fifty percent of the total eligible expenses. If state funds are not otherwise available to the governor, an advance of the state share may be accepted from the federal government to be repaid when the state is able to do so. (Iowa Code § 29C.6(17))

VI. OTHER RELEVANT STATUTORY PROVISIONS

A. Immunities – State Law.

i. Immunity for Reporting and Cooperating with a Disease

Investigation. Any person who acts reasonably and in good faith in filing a disease report, releasing information, or otherwise cooperating with IDPH or a local health department or board in a disease investigation is immune from any liability, civil or criminal. (Iowa Code § 139A.3(2)(a)).

ii. Immunity for Compliance with a Vaccine Shortage Order.

“A health care provider, hospital, clinic, pharmacy, health care facility, local board of health, public health agency, or other person or entity that distributes or administers vaccines shall not be civilly liable in any action based on a failure or refusal to distribute or administer a vaccine to any person if the failure or refusal to distribute or administer the vaccine was consistent with a department order issued pursuant to” chapter 139A. (Iowa Code § 139A.8A)

iii. Immunity for Good Samaritans.

“A person, who in good faith renders emergency care or assistance without compensation, shall not be liable for civil damages for acts or omissions occurring at the place of an emergency or accident or while the person is in transit to or from the emergency or accident or while the person is being moved to or from an emergency shelter unless such acts constitute recklessness. An emergency includes but is not limited to a disaster as defined in section 29C.2 or the period of time immediately following a disaster for which the governor has issued a proclamation of a disaster emergency pursuant to section 29C.6. (Iowa Code § 613.17)

iv. Immunity for Businesses and Others Providing Disaster Aid.

“A person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, who, during a public health disaster, in good faith and at the request of or under the direction of the department or the department of public defense renders emergency care or assistance to a victim of a public health disaster shall not be liable for civil damages for causing the death of or injury to a person, or for damage to property, unless such acts or omissions constitute recklessness.” (Iowa Code § 135.147)

v. Immunity for State Volunteers.

“A person who performs services for the state government or any agency or subdivision of state government and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person’s duties, except for acts or omissions which involve the intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.” (Iowa Code § 669.24)

vi. State Immunity for Damages Associated with Quarantine.

The state has not waived immunity from suit and liability for “any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine

relates to persons or property.” (Iowa Code § 669.14(3)). Hence the state retains immunity against any claim for money damages resulting from issuing or enforcing a quarantine order.

vii. Immunity for Local Government. Local governments (cities, counties, townships) are immune from claims “based upon or arising out of an act or omission in connection with an emergency response including but not limited to acts or omissions in connection with emergency response communication services.” (Iowa Code § 670.4(1)(k)).

B. Immunities – Federal Law.

i. Volunteer Protection Act. This federal act generally provides that no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by the volunteer so long as the volunteer was acting within the scope of the person’s responsibilities, was properly licensed, and did not cause harm by willful or criminal misconduct, gross negligence, or reckless misconduct. (42 USCA Section 14503).

ii. Countermeasure Liability Legislation. This federal act limits liability with respect to pandemic influenza and other public health emergencies. If the Secretary of DHHS has declared a public health emergency or the credible risk of such emergency, this statute eliminates liability for manufacturers, distributors, program planners, and person who prescribe, administer, or dispense a “covered countermeasure.” (Division C of P.L. 109-148 (2005), 42 USCA 247d).

C. Confidentiality -- Information Sharing.

i. Reportable disease information. Iowa law generally and broadly provides that a disease report or other information provided to or maintained by IDPH, a local board, or a local department which identifies a person infected with or exposed to a disease or health condition, or which identifies a business, is confidential and shall not be accessible to the public. (Iowa Code § 139A.3(2)“b”; Iowa Code § 22.7(2) & (16)). However, IDPH may share information, including personally identifiable information, with law enforcement and other appropriate federal, state, and local agencies and officials, in limited circumstances as necessary to prevent, control, or investigate a public health disaster.

ii. When the department learns of a case of a disease or health condition, an unusual cluster, or a suspicious event that may be the cause of a public health disaster, the department shall immediately notify the department of public safety, the department of homeland security and emergency management, and other appropriate federal, state, and local agencies and officials.

(Iowa Code § 135.145(2))

VII. RELEVANT CASE LAW

In addition to the statutory references cited above, the United States Supreme Court and the Iowa Supreme Court have repeatedly held that a state department of public health possesses broad authority through the state's police powers to enact and enforce laws which protect the public health. These authorities would be relied upon to support action taken by IDPH which it deemed necessary to prevent, detect, manage, and contain a public health disaster.

A. Federal Case Law. The landmark United States Supreme Court case in the public health arena is Jacobson v. Massachusetts, which celebrated its 100th birthday in 2005. In Jacobson the Supreme Court affirmed Massachusetts' compulsory vaccination program, and in so doing affirmed the authority of a state health department to establish and enforce reasonable statutes and regulations to protect the public's health. The Court found that a state through its police powers has the authority to enact quarantine laws and "health laws of every description." 197 U.S. 11, 26 (1905). In balancing the rights of the individual versus the needs of a community to protect itself against disease, the Court notes:

The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. ... Upon the principles of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.

197 U.S. at 28.

Jacobson and its progeny would provide support for the state to take necessary action in the event of a public health disaster.

B. State Case Law. The Iowa Supreme Court has cited the Jacobson case in seven of its decisions, affirming that public health is a proper subject of a state's police powers. See Wilson v. City of Council Bluffs, 110 N.W.2d 569, 166 - 167 (Iowa 1961) (affirming ordinance providing for fluoridation of water to prevent dental caries in children); State v. Strayer, 299 N.W. 912 (Iowa 1941) (affirming public nuisance statute); Loftus v. Dep't of Agriculture, 232 N.W.412 (Iowa 1930) (affirming authority of department of agriculture to enforce bovine tuberculosis law). The Iowa Supreme Court

has also long upheld the state and county's ability to establish and enforce quarantine. See State v. Kirby, 94 N.W. 254 (Iowa 1903); Beeks v. Dickinson County, 108 N.W. 311 (Iowa 1906).

In addition to reliance on the state's police powers, in the event of a public health disaster the courts would likely rely on the judicial doctrine of providing deference to state agencies in areas of the agency's expertise. See, e.g. Leonard v. Iowa State Board of Education, 471 N.W.2d 815 (Iowa 1991); Morrison v. Century Engineering, 434 N.W.2d 874 (Iowa 1989); Mercy Health Center v. State Health Facilities Council, 360 N.W.2d 808 (Iowa 1985).