

# **The Minnesota Emergency Health Powers Act**

This information brief summarizes the Minnesota Emergency Health Powers Act, enacted in May 2002. The act expands the circumstances under which the governor may declare a national security emergency or peacetime emergency, increases the emergency management powers available to the governor and other officials, establishes standards and due process procedures for people being isolated or quarantined, and requires a study of other issues not resolved by the legislature.

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## Overview

In May 2002 the Minnesota Emergency Health Powers Act was enacted, giving the governor, commissioner of health, and other officials tools to respond to a public health emergency in this state. ([Laws 2002, ch. 402](#), codified mainly in [Minnesota Statutes, chapter 12](#)) Initial versions of the act were based on a proposal by the Minnesota Department of Health (MDH). The MDH proposal, in turn, was drawn from a Model State Emergency Health Powers Act prepared for the federal Centers for Disease Control and Prevention. The MDH proposal and the model act addressed a broad range of issues. The emergency health powers bills received substantial debate as they moved through the legislative process, and the final act addresses fewer issues than the initial proposals. The act covers the following topics:

- When the governor may declare a public health emergency
- Changes to the emergency management powers of the governor and other officials
- A person's right to refuse medical examinations, tests, and treatment
- Standards for isolation and quarantine, and due process procedures that apply to people who are isolated or quarantined
- Issues for the commissioner of health to study further and report on to the legislature in the 2003 session

All provisions in the act became effective May 23, 2002, the day following final enactment. The 2004 Legislature extended the act's expiration date to August 1, 2005 ([Laws 2004, ch. 279](#), art. 11, § 7). This sunset date gives the legislature three legislative sessions to modify and refine provisions in the act. If no legislative action is taken before the sunset date, the statutory changes made by the act will expire on that date.

## The Act Authorizes the Governor to Declare a Public Health Emergency

Provisions in [Minnesota Statutes, chapter 12](#), specify when the governor may declare a national security emergency or a peacetime emergency. The governor has discretion in deciding when to declare a national security or peacetime emergency. During an emergency, the governor may exercise additional emergency management powers. The act expands the situations in which the governor may declare a national security or peacetime emergency, to allow either type to be declared when a public health emergency exists.

- A national security emergency may be declared when a public health emergency occurs in Minnesota that is caused by enemy sabotage or other hostile action.
- A peacetime emergency may be declared when a public health emergency endangers life and property, and local government resources are not adequate to handle the situation.

**Definition of public health emergency.** For an emergency to be declared due to a public health emergency, there must be an illness or health condition present in Minnesota, or an imminent threat of an illness or health condition, that meets two specific criteria.

1. There must be evidence that the illness or health condition is caused either by:
  - bioterrorism;<sup>1</sup> or
  - a new, novel, or previously controlled or eradicated airborne, infectious agent or airborne, biological toxin; and
2. There must be a high probability that the illness or health condition will cause at least one of the following:
  - a large number of deaths
  - a large number of serious or long-term disabilities
  - widespread exposure to an airborne agent that poses a significant risk of substantial future harm to a large number of people

Determining whether these criteria are met will require the governor to exercise judgment. For instance, the governor must determine what constitutes a large number of deaths or disabilities, what level of exposure constitutes a significant risk, and what substantial future harm means.

**Requirements regarding consultation and notice.** Before the governor declares an emergency due to a public health emergency, the governor or the state director of emergency management must consult with the commissioner of public safety, the state director of homeland security, the commissioner of health, other experts, and, if the emergency occurs on Indian lands, the appropriate tribal authorities. However, the governor may declare an emergency without consultation if the situation requires it. When an emergency is declared due to a public health emergency, the governor and commissioner of health must notify legislative leaders, relevant committee chairs, and minority members on relevant legislative committees.

**Convening the legislature.** The act ensures that the legislature is in session when an emergency is declared due to a public health emergency. Prior existing law required the governor to call the legislature into session when the governor wanted to exercise emergency powers during a national security emergency. The act expands the governor's duty to convene the legislature so it applies to a peacetime emergency declared due to a public health emergency. Accordingly, if the governor wants to use the emergency powers conferred by [chapter 12](#) during a peacetime emergency declared due to a public health emergency and the legislature is not in session, the governor must call the legislature into session. If the legislature is not called into session, the governor cannot exercise his or her emergency powers.

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<sup>1</sup> Bioterrorism is defined in part to mean the use of a microorganism, virus, infectious substance, or biological product to cause death, disease, or biological malfunction in a living organism. The agent must be intentionally used to influence the conduct of government or coerce a civilian population.

**Termination and renewal of a public health emergency.** The act provides that an emergency declared due to a public health emergency automatically terminates 30 days after it is declared. In addition, the legislature may terminate this emergency any time after it is declared. For the legislature to terminate an emergency, a majority in each body must vote to do so. The governor has authority to renew an emergency declared due to a public health emergency for 30-day periods. Termination of an emergency by the legislature overrides a renewal by the governor.

[Minn. Stat. §§ 12.03](#), subds. 1c, 9a; [12.31](#), subds. 1, 2; [12.311](#); [12.312](#).

## **The Act Modifies Emergency Management Powers**

The emergency management powers of the governor, the executive council, and other officials are governed by provisions in [chapters 9](#) and [12](#). The act expands the emergency management powers of the governor and others. Some of the expanded powers may be exercised only when an emergency has been declared, and some powers may be exercised in emergency and nonemergency situations to help train or prepare for future emergencies.

**New powers to be exercised in emergencies and nonemergencies.** The governor may exercise the following new powers in emergencies and nonemergencies.

- *Facilities:* The governor may procure facilities<sup>2</sup> in accordance with the state's emergency operations plan and emergency management program.
- *Arrangements and agreements with tribal authorities:* The governor may enter into mutual aid arrangements or cooperative agreements with tribal authorities. This is in addition to the governor's existing power to enter into mutual aid arrangements or cooperative agreements with other states and Canadian provinces.
- *Occupying public places and facilities, using transportation:* Prior law authorized the governor to direct or control the conduct of people in the state and the movement of people and traffic before, during, and after drills and emergencies. The new law specifies that these powers include the authority to control who may enter or leave a stricken or threatened public place, who may occupy a facility, and all forms of public and private transportation.
- *State agency activities:* The governor may transfer the personnel or duties of state agencies to perform or facilitate emergency response and recovery programs.

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<sup>2</sup> Facility means any real property or any motor vehicle or other means of transportation. It does not include a private residence, so the governor does not have authority to procure private homes.

**New powers to be exercised only during emergencies.** The following new powers may be exercised when an emergency has been declared.

- *Governor's orders and rules:* Prior law gave orders and rules adopted by the governor during a national security emergency the full force and effect of law; those orders and rules also had to be approved by the executive council and filed with the secretary of state. The act expands this law, to give the full force and effect of law to orders and rules adopted by the governor during a peacetime emergency declared due to a public health emergency; these orders and rules must also be approved by the executive council and filed with the secretary of state.
- *Commandeering medical supplies and facilities:* The governor, state director of emergency management, or a member of a state or local emergency management organization designated by the governor may commandeer medical supplies<sup>3</sup> and facilities<sup>4</sup> for emergency management purposes, when necessary to save lives, property, or the environment. These powers may be exercised during a national security emergency declared for any reason, or during a peacetime emergency declared due to a public health emergency.
- *Requiring service and commandeering property:* Prior law authorized the governor, state director of emergency management, or a member of a state or local emergency management organization designated by the governor to require, during a national security emergency, any person to perform emergency management services, if the person is not a member of the military and is not an officer of the state or a political subdivision. Prior law also authorized the governor, state director, or designated member to commandeer motor vehicles, tools, appliances, and other personal property during a national security emergency. The act expands this law, to allow these powers to also be exercised during a peacetime emergency declared due to a public health emergency.
- *Disposition of bodies:* During an emergency declared due to a public health emergency, the governor may exercise certain powers to ensure the safe disposition of dead human bodies. This applies only to deaths related to the public health emergency. The governor may ensure the safe disposition of bodies; take control of a dead human body and order an autopsy; and ask that any business or facility authorized to dispose of dead human bodies be allowed to be used during an emergency, if the actions are reasonable, necessary, and safe. Requirements for the identification of bodies are also established.

[Minn. Stat. §§ 12.03](#), subds. 4d, 6a; [12.21](#), subd. 3; [12.32](#); [12.34](#), subd. 1; [12.381](#).

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<sup>3</sup> Medical supplies means any medication, durable medical equipment, instruments, or other material that a health care provider deems not essential to the continued operation of the provider's practice or facility. It does not include medication, durable medical equipment, or other material that is an individual's personal property being used by that individual or that an individual has borrowed, leased, or rented for treatment or care; these types of supplies cannot be commandeered.

<sup>4</sup> See footnote 2 for a definition of facility.

## **The Act Confirms a Person's Right To Refuse Medical Examinations, Testing, and Treatment During an Emergency**

The act specifies that during any type of emergency, a person may refuse medical examinations, testing, and treatment. However, if a person refuses any of these services after being directed to submit to them by the commissioner of health, the commissioner may order the person to be isolated or quarantined, in certain circumstances. When possible before examining, testing, or treating a person for a condition related to an emergency, the health care provider must notify the person to be examined, tested, or treated of the right to refuse and the consequences of refusal.

[Minn. Stat. § 12.39.](#)

## **The Act Establishes Isolation and Quarantine Standards and Due Process Procedures**

The act contains two provisions that refine and clarify the authority of the commissioner of health to isolate and quarantine individuals. One new section defines isolation and quarantine terms and establishes basic standards that the commissioner, or any person acting under the commissioner's authority, must follow when isolating or quarantining. This section also specifies when a person's isolation or quarantine must end, confirms the ability of isolated and quarantined persons to refuse medical testing and treatment, and governs who may enter isolation and quarantine areas. Another new section establishes due process procedures for isolated and quarantined persons.

Isolation and quarantine apply to different groups of people. A person may be isolated if the person has been infected with a communicable or potentially communicable disease. A person may be quarantined if the person is otherwise healthy but has likely been exposed to a communicable or potentially communicable disease.

**Application.** The new isolation and quarantine provisions apply to people who have or may have certain communicable or potentially communicable diseases believed to be caused by bioterrorism or a new, novel, or previously controlled or eradicated agent or toxin. However, they do not apply to people with communicable diseases that are directly transmitted from person to person.<sup>5</sup>

**Isolation and quarantine standards.** When the commissioner or another person acting under the commissioner's authority isolates or quarantines a person or group, the commissioner or other person must comply with certain basic standards. These standards include using the least restrictive means to isolate or quarantine, keeping isolated people separate from quarantined people, regularly monitoring their health status, moving quarantined individuals into isolation if they become infectious, immediately releasing individuals if they will not transmit a communicable or potentially communicable disease to others, addressing the physical needs of

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<sup>5</sup> A disease is directly transmitted if it is sexually transmitted, bloodborne, or transmitted through direct or intimate skin contact.

isolated and quarantined individuals, and isolating and quarantining people in safe, hygienic places.

**Right to refuse examination, testing, and treatment.** Any isolated or quarantined person may refuse medical treatment, testing, and examination. If a person refuses to be examined, tested, or treated as ordered by the commissioner or another person, the person may be subject to continued isolation or quarantine.

**Entering an isolation or quarantine area.** Only persons authorized by the commissioner or a person acting under the commissioner's authority may enter an isolation or quarantine area. The commissioner must allow a family member of an isolated or quarantined person to enter, if the family member signs a consent form. A person entering an isolation or quarantine area may be isolated or quarantined, if by entering the area the person poses a public health danger.

**Procedures for isolating or quarantining a person.** There are two procedures under which a person may be initially isolated or quarantined: court order and temporary hold.

- *Court order:* The commissioner or a local public health board may obtain a court order to isolate or quarantine a person for up to 21 days. In seeking this type of order, the commissioner does not need to give notice of the application to the person to be isolated or quarantined.
- *Temporary hold:* The commissioner may isolate or quarantine a person for up to 48 hours using a temporary hold issued by the commissioner, without obtaining a court order. If the commissioner uses a temporary hold, the commissioner must apply for a court order within 24 hours, and the court must decide whether to grant or deny the court order within 24 hours. If the court order is granted, the person may be isolated or quarantined for up to 21 days. If the order is denied, the person must be released.

A person who is isolated or quarantined may request and obtain a court hearing in some specific situations.

- An isolated or quarantined person may, at any time while under isolation or quarantine, request a court hearing to challenge it. This hearing must take place within 72 hours of the request.
- The commissioner or a local public health board must ask for a court hearing if the commissioner or board wants to continue a person's isolation or quarantine beyond the initial 21-day period. After this hearing, the court may order a person's isolation or quarantine to continue for up to 30 days, or may order the person to be released. For each additional 30-day period for which the person will be held, another court hearing must be held, and another court order must be obtained. If the court denies a request for continued isolation or quarantine, the person must be released.
- An isolated or quarantined person may request a court hearing to ask for changes to his or her treatment while isolated or quarantined or changes to the circumstances of isolation or quarantine. This hearing must be held within seven days of its request. The court may

order changes to a person's treatment or circumstances of isolation or quarantine if the court decides that the person's isolation or quarantine does not comply with the standards described above.

**Release from isolation or quarantine.** A person must be released from isolation or quarantine when the court order expires. In addition, the commissioner may release a person at any time if the commissioner determines isolation or quarantine is not needed to protect the public.

[Minn. Stat. §§ 144.419; 144.4195.](#)

## **The Act Requires a Study and Report to the Legislature**

At the end of the 2002 legislative session, many significant issues were not resolved. Legislators determined that a certain number of these issues needed to be examined further before taking action on them. Accordingly, the act directed the commissioner of health to study these issues and report on them to the legislature by January 15, 2003. Subjects that were addressed included:

- Immunity for health care providers and others acting during a public health emergency
- Emergency measures regarding dangerous facilities and materials, controlling medical facilities and supplies, and limiting public gatherings and transportation
- Steps to detect and prevent the spread of disease
- Due process protections to apply to isolated and quarantined people
- Steps to ensure people comply with emergency measures, and with measures to detect and prevent the spread of disease
- Ways to preserve the effectiveness of certain antibiotics to fight diseases
- The impact of the commissioner's recommendations on the constitutional and other rights of the public

In developing recommendations on these issues, the commissioner consulted with several government agencies and private groups. Before submitting recommendations to the legislature, the commissioner published the recommendations in the State Register and gave the public at least 30 days to comment on them. The 2004 Legislature did not act on any of the recommendations. The report can be found at [www.health.state.mn.us/oep/docs/2003\\_02\\_20\\_emergencyPowers.pdf](http://www.health.state.mn.us/oep/docs/2003_02_20_emergencyPowers.pdf).

[Laws 2002, ch. 402, § 20.](#)

*For more information about health issues, visit the health and human services area of our web site, [www.house.mn/hrd/issinfo/hlt\\_hum.htm](http://www.house.mn/hrd/issinfo/hlt_hum.htm).*