

**LEGAL AUTHORITY OF  
COUNTY HEALTH DEPARTMENTS  
AND COUNTY BOARDS OF HEALTH  
REGARDING DISEASE REPORTING AND CONTAINMENT**

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[DISCLAIMER: This outline is intended to provide general legal information to county health departments and county boards of health, and does not constitute legal advice. Counties with questions regarding the applicability of the law to a specific situation are encouraged to contact their county attorney or other designated legal counsel to obtain legal advice.]

## **I. Disease Reporting**

### **A. Who must report?**

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 all cases of reportable diseases. (Iowa Code section 139A.3, 641 IAC chapter 1)

ii. Hospitals and other health care facilities are required to report all cases of reportable diseases. (641 IAC 1.4(1))

iii. School nurses are required to report suspected cases of reportable diseases occurring among the school children they supervise. If there is no school nurse, school officials are required to make the report. (641 IAC 1.4(1)(b) & (c))

iv. Poison control and poison information centers are required to report inquiries about cases of reportable diseases received by them. (641 IAC 1.4(1)(e))

v. Medical examiners are required to report their investigatory finding of any death which was caused by or otherwise involved a reportable disease. (641 IAC 1.4(1)(f))

vi. Occupational nurses are required to report cases of reportable diseases. (641 IAC 1.4(1)(g))

vii. Hospitals, health care providers and clinical laboratories outside the state of Iowa are required to immediately report any confirmed or suspected case of a reportable disease, poisoning, or condition in an Iowa resident. (641 IAC 1.4(1)(h))

**B. To whom must a report be made?** Reports must be filed with the Iowa Department of Public Health (IDPH) in the manner prescribed by rule. When a case occurs within the jurisdiction of a local health department, the report must be made to both IDPH and the local health department. (Iowa Code section 139A.3)

## **C. What diseases and conditions must be reported?**

### **i. Reportable communicable and infectious diseases including:**

a. All communicable and infectious diseases and conditions designated in 641 Iowa Administrative Code chapter 1, Appendix A. IDPH has created a reportable disease table which is accessible from its website at <https://idph.iowa.gov/CADE/reportable-diseases>. Additional reporting requirements regarding HIV related tests are contained in 641 IAC 11.6.

b. In addition, the rules require immediate reporting to IDPH at (800) 362-2736 of:

\* Diseases, syndromes, poisonings and conditions of any kind suspected or caused by a biological, chemical, or radiological agent or toxin when there is a reasonable suspicion that the disease, syndrome, poisoning, or condition may be a result of a deliberate act such as terrorism; (641 IAC chapter 1, Appendix A)

\*Outbreaks 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 illnesses secondary to chemical exposure (641 IAC chapter 1, Appendix A)

### **ii. Reportable poisonings and conditions including**

a. All reportable poisonings and conditions designated in 641 IAC chapter 1, Appendix B.

b. In addition, the rules require immediate reporting to IDPH at (800) 362-2736 of:

\*Diseases, syndromes, poisonings and conditions of any kind suspected or caused by a biological, chemical, or radiological agent or toxin when there is a reasonable suspicion that the disease, syndrome, poisoning or

condition may be the result of a deliberate act such as terrorism. (641 IAC chapter 1, Appendix B).

\*Outbreaks 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. (641 IAC chapter 1, Appendix B).

**iii. Blood lead testing.** Blood lead testing results shall be reported in accordance with 641 IAC 1.6(3).

**iv. Cancer.** Each occurrence of a reportable cancer that is diagnosed or treated in an Iowa resident or occurs in a nonresident who is diagnosed or treated in an Iowa facility shall be reported to the State Health Registry of Iowa. The Department has delegated to the State Health Registry of Iowa the responsibility for collecting these data through review of records from hospitals, radiation treatment centers, outpatient surgical facilities, oncology clinics, pathology laboratories, and physician offices. 641 IAC 1.14.

**v. Congenital and inherited disorders.** Each occurrence of a congenital and inherited disorder that is diagnosed or treated in an Iowa resident or occurs in a nonresident who is diagnosed or treated in an Iowa facility is a reportable condition. The Department has delegated to the Iowa Registry for Congenital and Inherited Disorders the responsibility for collecting these data through review of records. 641 IAC 1.15.

**vi. Agriculturally related injury.** Agriculturally related injuries are required to be reported pursuant to 641 IAC 1.16.

**D. Is the report confidential?** Yes. Information contained in a report to IDPH, a local board, or a local department which identifies a person infected or suspected to be infected with a reportable or other disease or health condition is confidential. (Iowa Code sections 22.7(2), 22.7(16), 139A.3(2); 641 IAC 1.17). Information contained in a disease report may be reported in public health records only in a

manner which prevents the identification of any person or business named in the report. (Iowa Code section 139A.3(2)(c)). However, information concerning the identity of a business may be released to the public when the state epidemiologist or the director of public health determines such a release of information necessary for the protection of the public. (Iowa Code section 139A.3(2)(c)). IDPH has provided guidance to IDPH staff and to counties regarding confidentiality of reportable disease records in its Policy for the Disclosure of Confidential Public Health Records, ES 06-13-002.

**E. Are there penalties for not reporting?** An individual who repeatedly fails to file a disease report is subject to a report being made to such person's licensing board and risks discipline being taken against their license to practice. A public, private, or hospital clinical laboratory which repeatedly fails to file a mandatory report is subject to a civil penalty of not more than \$1000 per occurrence. (Iowa Code section 139A.25).

## **II. Disease Investigation**

**A. Who is authorized to conduct disease investigations?** IDPH and local boards of health and health departments are authorized to conduct disease investigations. (Iowa Code sections 135.11(4), 137.103, 137.104, and 139A.3). Every health care provider and laboratory who files a reportable disease report with IDPH or a local board or department has a legal duty to assist in any investigation undertaken by IDPH, a local board of health, or a local health department. (Iowa Code section 139A.3, 641 IAC 1.7).

### **B. What is the definition and scope of the investigation?**

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. The duty of health care providers and laboratories 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 section 139A.3(3); 641 IAC 1.7)

iii. IDPH may “upon the request of a local board of health, the state public health medical director and epidemiologist or designee, or the state public health veterinarian or designee, subpoena records, reports, or any other evidence needed to conduct an investigation.” (Iowa Code section 139A.3(3); 641 IAC 1.7(2)).

**C. Does HIPAA prevent IDPH or a county from obtaining information in a disease investigation?**

No. HIPAA expressly permits covered entities to report disease, injury, health conditions, and poisonings to public health authorities including IDPH and a county board or health department-- 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. As discussed above, 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 and conditions listed in 641 IAC chapter 1 to IDPH and appropriate counties and to assist in the disease investigation, including providing all necessary information to these entities. These provisions of law are not preempted by HIPAA and therefore the disclosure 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). Health care providers and laboratories are required by Iowa law to report certain diseases and conditions, syndromes, occupationally related conditions, agriculturally related injuries, and poisonings to IDPH and appropriate counties and to assist in the disease investigation. Hence, HIPAA does not require that covered entities obtain consent or authorization prior to releasing reportable disease information to IDPH or county boards of health or health departments.

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.

### **III. Disease Containment B Isolation and Quarantine**

**A. Definition of Isolation and Quarantine.** 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.

“Quarantinable disease” means any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread. Quarantinable disease includes but is 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; novel influenza; and severe acute respiratory syndrome (SARS).

(Iowa Code section 139A.2(15), (20) &(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 sections 139A.2(1) and 139A.4(4)). IDPH has adopted administrative rules which outline the process for imposing and enforcing area quarantine. (641 IAC 1.13).

**B. Authority to Quarantine and Isolate.** Under Iowa law, both IDPH and local boards of health are authorized to impose and enforce quarantine and isolation and area quarantine. (Iowa Code section 139A.4(2) & (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). The process for adoption of the model rule by reference is attached to this outline as Attachment 1.

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 Aprimary 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).

**C. Voluntary Confinement.** Prior to instituting mandatory quarantine or isolation, IDPH or a local board of health Amay request that an individual or group of individuals voluntarily confine themselves to a private home or other facility. (641 IAC 1.9(2)a, 1.12(3)a). A template request for voluntary confinement is attached to this outline as Attachment 2.

**D. Process for Quarantine and Isolation.**

**i. Who may issue quarantine or isolation order.**

IDPH may impose 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. A local board of health may impose quarantine and isolation through board action.

**ii. Process for issuing order under model rule.**

**a. Oral order.** A local board of health 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 board's ability to prevent or limit the transmission of a communicable or possibly communicable disease to others. If the board imposes temporary isolation or quarantine of an individual or groups of individuals through an oral order, the board 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 1.12(6)(c))

**b. Written order.** If sufficient time is available, a local board should quarantine or isolate only after issuing a written order. A template home quarantine order is attached as Attachment 3; a template facility quarantine order is attached as Attachment 4; a template home isolation order is attached as Attachment 5; and a template facility isolation order is attached as Attachment 6.

**i. Content.** A written order must include:

1. The identity of the individual, individuals, or groups of individuals subject to isolation or quarantine.
2. The premises subject to isolation or quarantine.
3. The date and time at which isolation or quarantine commences.
4. The suspected communicable disease.

5. 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.
6. A statement of compliance with the conditions and principles for isolation and quarantine specified in subrule 1.12(4).
7. The legal authority under which the order is requested.
8. The medical basis upon which isolation or quarantine is justified.
9. A statement advising the individual, individuals, or groups of individuals of the right to appeal the written order pursuant to subrule 1.12(7) and the rights of individuals and groups of individuals subject to quarantine and isolation as listed in subrule 1.12(8).
10. A copy of this rule and the relevant definitions of this rule.

(641 IAC 1.12(6)d).

**ii. 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 1.12(6)d(2)). Service of the order should either be effected 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, if IDPH or local public health were requesting the assistance of

local law enforcement to serve quarantine orders during a measles outbreak, public health should ensure that the officers involved have 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 1.12(6)(d)(2))

**c. 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:

i. 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.

ii. Isolated individuals shall be confined separately from quarantined individuals.

iii. The health status of isolated or quarantined individuals shall be monitored regularly to determine if the individuals require further or continued isolation or quarantine.

iv. 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.

v. 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.

vi. 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.

vii. 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.

viii. 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), 1.12(4))

**d. Quarantine and Isolation Premises.** Upon issuance of a quarantine or isolation order, a local board may placard the site with signs prescribed by IDPH, if deemed appropriate by IDPH. (Iowa Code section 139A.5; 641 IAC 1.12(5)(a)). Reportable disease information may be included on a placard as necessary to prevent the spread of a quarantinable disease. (641 IAC 1.17(3)(f)).

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 1.12(5)(b), Ad). 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 1.12(5)(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 1.12(5)(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 1.12(5)).

**e. Due process.**

**i. Appeal Rights.** The subject of a quarantine or isolation order has the right to appeal such order to the body specified by the local boards in accordance with 641 IAC 1.12(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.

**ii. Other rights.** Any individual or group of individuals subject to isolation or quarantine shall have the following rights:

- a. The right to be represented by legal counsel.
- b. The right to be provided with prior notice of the date, time, and location of any hearing.
- c. 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.
- d. The right to respond and present evidence and argument on the individual's own behalf in any hearing.
- e. The right to cross-examine witnesses who testify against the individual.
- f. 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 1.12(8))

**f. 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 issued by a local board is a simple misdemeanor subject to fines and imprisonment. (Iowa Code section 137.117; 641 IAC 1.12(10)(d)). A local board of health may also impose a civil penalty not to exceed \$ 750 for a violation of a quarantine or isolation order; if the violation is a repeat offense, a civil penalty not to exceed \$ 1000 may be imposed. (Iowa Code section 137.117) In addition, the local board, through the office of the county attorney, may file a civil action to enforce a board order for isolation or quarantine. (641 IAC 1.12(10)(d)).

**g. 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 section 139A.13A).

**h. County financial responsibilities.** Iowa law provides that counties are responsible for providing “care, provisions, and medical attendance” for a person under quarantine and isolation if such person is financially unable to pay. This obligation may include the provision of food, housing/lodging, and medical treatment for the duration of the period of quarantine or isolation. (Iowa Code section 139A.11; *see also Gill v. Appanoose County*, 25 N.W. 908 (Iowa 1885) (county is liable for care only if infected person or the person liable for their support is

unable to pay); *City of Clinton v. Clinton County*, 16 N.W. 87 (Iowa 1883) (same); *Tweedy v. Fremont County*, 68 N.W. 921 (Iowa 1896) (same)).

Local boards make the determination of whether a person is financially unable to pay for services and supplies during the period of confinement. Local boards should adopt a rule or policy to follow in reaching this determination. This policy should address the rights of a person to appeal a determination of financial ability to pay should the person disagree with such determination. These appeal rights should be consistent with the appeal rights of those persons isolated or quarantined as contained in 641 IAC 1.12(7).

In general, the county in which the infected person has legal settlement is responsible for payment of care, provisions, and medical attendance, if the person is unable to pay. (Iowa Code section 139A.12; *see also* Op. Atty. Gen. 1940, p. 485 (county in which the infected person has legal settlement pays the bills for care and services only if the patient is unable to do so)). The county in which the infected person has a legal settlement should be determined in the manner provided in Iowa Code § 252.16. If a person does not have legal settlement in the county in which the bills were incurred and paid, Iowa Code chapter 139A provides the amount paid shall be certified to the board of supervisors of the county in which the person claims settlement or owns property, and the board of supervisors of that county shall reimburse the county from which the claim is certified, in the full amount originally paid (Iowa Code section 139A.18).

If the person does not claim settlement or own property in any county, the county in which the quarantine or isolation was ordered should pay for the care and services if the infected person is unable to do so. *See City of Clinton v. County of Clinton*, 16 N.W. 87 (Iowa 1883) (if the infected person has no legal settlement, “the sick or infected person must be deemed to belong to the county where the relief becomes necessary”). The code also includes a process for payment. (Iowa Code section 139A.14 – 139A.17).

**E. Other Orders.** “If a person, whether or not a resident, is infected with a communicable disease dangerous to the public health, the local board shall issue orders in regard to the care of the person as

necessary to protect the public health. The orders shall be executed by the designated officer as the local board directs or provides by rules. (Iowa Code section 139A.6)

**F. Rabies – dogs and other animals.** Local boards of health are charged with enforcing the provisions of Iowa Code chapter 351 regarding rabies vaccinations and impoundment of dogs. (Iowa Code section 351.36). First, local boards are authorized to apprehend and impound dogs running at large if the dog is not wearing a valid rabies vaccination tag or a certificate of vaccination is not presented to the local board. Iowa Code section 351.37 outlines the procedure for local boards to follow for dogs running at large.

Second, if a dog or other animal bites a person or is suspected of having rabies, the board is authorized to order the owner to confine the animal and to apprehend and impound the animal if the owner fails to properly confine it. Iowa Code section 351.39 outlines the procedure for local boards to follow for animals which have bitten a person or are suspected of having rabies.

There is no statewide law or regulation which more broadly addresses or governs the handling of vicious or dangerous dogs. The Department encourages local jurisdictions to consult with their legal counsel to adopt a dangerous dog ordinance to comprehensively address such issues.

#### **IV. DISEASE CONTAINMENT IN THE EVENT OF A PUBLIC HEALTH DISASTER**

##### **A. Public Health Disaster.**

**i. Scope and Definition.** This section of the 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. Local boards of health and local health departments would play an important role in the detection, management and containment of 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 meet 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 section 135.140(6))

Hence in order for a public health disaster to exist, there must be an imminent threat of illness or health condition which is caused by one of the incidents in subsection Aa@ AND poses a high probability of a large number of deaths, serious or long term disabilities, or substantial future harm to a large number of persons.

**ii. Examples.**

-- Previously controlled/eradicated diseases. By way of example, past measles outbreaks in Iowa did not constitute a public health disaster, even though they involved the appearance of 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, if an outbreak spread in an unvaccinated and vulnerable population, a public health disaster may be declared. Certainly an outbreak of a previously eradicated disease with a higher mortality or morbidity rate, such as smallpox or polio, could constitute cause to declare a public health disaster. In addition, the appearance of a novel disease – such as a strain of avian influenza 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. An accidental 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.

**B. 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. The Division is charged with coordinating the administration of public health disaster laws and coordinating with other divisions of IDPH and with federal, state, and local agencies and officials. (Iowa Code section 135.141).

**ii. Duties of Department.** The Department is specifically charged with the duty to:

a. Coordinate with the homeland security and emergency management division of the department of public defense 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.

b. 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.

c. 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.

d. For the purpose of paragraphs "c", 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.

e. 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.

B 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 administrating the stockpile. Questions regarding the SNS should be directed to IDPH=s SNS Officer at (515) 242-5039.

f. Conduct or coordinate public information activities regarding emergency and disaster planning matters that involve the public health.

g. Apply for and accept grants, gifts, or other funds to be used for programs authorized by this division of this chapter.

h. Establish and coordinate other programs or activities as necessary for the prevention, detection, management, and containment of public health disasters.

i. 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.

(Iowa Code section 135.141(2)).

**C. Health Care Supplies.** 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 section 135.142(1))

In addition, if a public health disaster exists or one is imminent and such disaster 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 section 135.142(2) & (3)).

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 section 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 section 135.142(5)).

**D. 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 section 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 section 135.140(7))

IDPH currently registers and is able to deploy four different types of public health response teams: (1) disaster medical assistance teams (DMAT); (2) environmental health response teams (EHRT); (3) Iowa mortuary operation response teams (IMORT); and (4) logistical support response teams (LSRT). For questions regarding the public health response teams, call the Bureau of Emergency and Trauma Services at 1-800-728-3367 or (515) 281-0620. For deployment requests, contact the local emergency management coordinator.

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 section 135.143)

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 section 135.143(3))

**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 (AEMAC®). (Iowa Code section 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 section 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 section 29C.21, Article VIII).

**E. Vaccine Shortages.** A vaccine shortage may result from or be the cause of a public health disaster. 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 section 139A.8A)

**F. Declaration.** The Governor of the State of Iowa must proclaim a public health disaster in accordance with Iowa Code section 29.6 in order for IDPH to take any of the actions outlined in section G, with the exception of quarantine and isolation. 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 section 29C.6(1)).

**G. 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 section 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 section 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 section 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 section 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 section 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 section 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 section 135.144(7))

**vii. 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 section 135.144(8))

**Note:** While section 135.144 provides IDPH with the authority to quarantine and isolate during a public health disaster, IDPH and local boards of health possess 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 section 139A.4) The process IDPH follows to implement and enforce quarantine and isolation is the same regardless of whether a public health disaster has been declared.

**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 section 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 section 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 section 135.144(11)).

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

**xiii. School closure.** 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 section 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 section 135.142).

**H. 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. [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. (Iowa Code section 29C.6(4))

ii. 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 section 29C.6(6))

iii. 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 section 29C.6(10))

iv. 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 section 29C.6(11))

v. 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 section 29C.6(12))

vi. 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 section 29C.6(13))

vii. Prescribe routes, modes of transportation, and destinations in connection with evacuation. (Iowa Code section 29C.6(14))

viii. 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 section 29C.6(15))

ix. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. (Iowa Code section 29C.6(16))

## **I. Immunities.**

**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 section 139A.3(2)"a").

**ii. Immunity for Compliance with a Vaccine Shortage Order.** AA 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 section 139A.8A)

**iii. Immunity for Good Samaritans.** AA 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 or willful and wanton misconduct. (Iowa Code section 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 the 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 section 135.147)

**v. Immunity for State Volunteers.** AA 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 section 669.24)

**vi. State Immunity for Damages Associated with Quarantine.** The state has not waived immunity from suit and liability for Aany 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 section 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 section 670.4(1)(k)).

**viii. Immunities – Federal Law.**

**a. 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).

**b. 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))

**J. Confidentiality -- Information Sharing.** Iowa law generally and broadly provides that information contained in a disease report or

other information provided to or maintained by IDPH, a local board, or a local department which identifies a person or a business is confidential and shall not be accessible to the public. (Iowa Code section 139A.3(2)(b); Iowa Code section 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:

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 section 135.145(2))

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 section 135.145(3)).