



SPONSOR: Rep. Maier & Sen. Blevins
& Rep. Spence; Reps. Buckworth,
Ewing, Hudson, Ulbrich, Valihura,
Keeley; Sens. Adams, McDowell,
Henry, Marshall, McBride, Sokola,
Vaughn, Amick, Sorenson, Cloutier,
Connor, Simpson, Still, Winslow

HOUSE OF REPRESENTATIVES

141st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1

FOR

HOUSE BILL NO. 377

AN ACT TO AMEND TITLES 16 AND 20 OF THE DELAWARE CODE RELATING TO EMERGENCIES AND PUBLIC HEALTH.

WHEREAS, the national Centers for Disease Control has recommended that all states review their statutory schemes to ensure that those schemes provide specific procedures and authority in the event of a bioterrorism attack or other emergency involving communicable disease; and

WHEREAS, Delaware statute provides the government with broad authority in the event of a declared emergency, but does not provide sufficient specific procedures and authority for the government to use in the event of a bioterrorism attack or other emergency involving communicable disease; and

WHEREAS, model legislation has been proposed by legal and medical authorities to ensure that state governments are able to properly react to bioterrorism attacks; and

WHEREAS, the following legislation is based in part upon that model legislation, with alterations made to reflect existing Delaware law and situations unique to Delaware; and

WHEREAS, this legislation seeks to specify, not expand, emergency authority and procedures.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. This Act may be cited as the "Delaware Emergency Health Powers Act".

2 Section 2. Add new subparagraph (8) to Title 16, Section 122 of the Delaware Code, which shall read as follows:

3 “(8) The powers and duties of the Department are subject to the powers and duties granted other entities in
4 Title 20 of the Delaware Code. Provisions of Title 20 of the Delaware Code which conflict with
5 provisions of this Section shall take precedence over this Section.”.

6 Section 3. Delete Title 16, Section 129 of the Delaware Code, and replace it with the following:

7 “§ 129. Threatened epidemics; appointment of officers to enforce regulations and orders.

8 With the exception of circumstances encompassed by Title 20 of the Delaware Code, when any
9 contagious or infectious disease shall become or threaten to become epidemic, and the local authorities shall
10 neglect or refuse to enforce efficient measures for its prevention, the Secretary or the Secretary’s designee may
11 appoint a medical or sanitary officer and such assistants as the Department or Division may require, and
12 authorize such medical or sanitary officer to enforce such orders or regulations as the Secretary deems necessary.
13 Provisions of Title 20 of the Delaware Code which conflict with provisions of this Section shall take precedence
14 over this Section.”.

15 Section 4. Add new subparagraphs (d) and (e) to Title 20, Section 3115 of the Delaware Code, which shall read as
16 follows:

17 “(d) If the Governor should determine that a public health emergency exists, as that term is defined at Section
18 3132 of this Title, the Governor shall so indicate in the issuance of a proclamation of a State of
19 Emergency pursuant to this Section.

20 (e) The Governor’s decision to proclaim a State of Emergency and/or a public health emergency pursuant to
21 this Section is not subject to judicial injunction.”.

22 Section 5. Delete Title 16, Section 130 of the Delaware Code, and replace it with the following:

23 “§130. Reporting of Potential or Existing Public Health Emergencies.

24 (a) Except as otherwise indicated in this Chapter or Chapter 20 of the Delaware Code, the Secretary of Health
25 and Social Services or his/her designee shall be responsible for implementing all measures designed to
26 address potential contagious diseases or infectious diseases in this State.

27 (b) A health care provider shall report all cases of persons who harbor any illness or health condition that may
28 be potential causes of a public health emergency. Reportable illnesses and health conditions include, but
29 are not limited to, the diseases caused by the biological agents listed in 42 C.F.R. § 72.3 and symptoms of

those diseases, and any illnesses or health conditions identified by the Division of Public Health as notifiable diseases.

(c) In addition to the foregoing requirements, a pharmacist shall report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be potential causes of a public health emergency. Prescription-related events that require a report include, but are not limited to:

- (1) an unusual increase in the number of prescriptions to treat fever, respiratory, or gastrointestinal complaints;
- (2) an unusual increase in the number of prescriptions for antibiotics; and
- (3) any prescription that treats a disease that is relatively uncommon or may be associated with bioterrorism.

(d) Reports pursuant to paragraphs (b) and (c) of this section shall be made electronically or in writing within twenty-four hours to the Division of Public Health, or within such time less than twenty-four hours as may be established by the Division of Public Health by regulation. The report shall include as much of the following information as is available: the patient's name, date of birth, sex, and current address (including city and county); the name and address of the health care provider or medical examiner and of the reporting individual, if different; and any other information needed to locate the patient for follow-up. For cases related to animal or insect bites, the suspected locating information of the biting animal or insect, and the name and address of any known owner, shall be reported.

(e) Every veterinarian, livestock owner, veterinary diagnostic laboratory director, or other person having the care of animals shall report animals having or suspected of having any disease that may be potential causes of a public health emergency. The report shall be made within twenty-four hours to the Department of Agriculture and shall include as much of the following information as is available: the suspected locating information of the animal, the name and address of any known owner, and the name and address of the reporting individual. The Department of Agriculture shall promulgate regulations implementing this subsection. The Department of Agriculture shall provide written or electronic notice to the Division of Public Health of any reports received pursuant to this subsection within twenty-four hours of receipt of said report, and such notice shall contain all information provided in the report.

(f) For the purposes of this Section, the definition of ‘health care provider’ shall include out-of-state medical laboratories, provided that such laboratories have agreed to the reporting requirements of this State.

Results must be reported by the laboratory that performs the test, but an in-state laboratory that sends specimens to an out-of-state laboratory is also responsible for reporting results.

(g) Definitions from Title 20, Section 3132 shall apply to this Section.”.

Section 6. Delete Title 16, Section 503 of the Delaware Code, and replace it with the following:

“§ 503. Unreported contagious disease.

When complaint is made or there is a reasonable belief of the existence of an infectious or contagious disease which has not been reported as required by § 502 of this Title, the Secretary of Health and Social Services or his or her designee shall inspect or cause the relevant building or facility to be inspected and, on discovering that such disease exists, shall immediately make a report as described in Section 130 of this Title.”.

Section 7. Delete Title 16, Section 504 of the Delaware Code, and replace it with the following:

“ § 504. Notifiable Diseases.

The Division of Public Health may by regulation declare any disease to be a notifiable disease, as that term is used in Section 130(a) of this Title.”.

Section 8. Add a new subsection to Title 16, Section 505 of the Delaware Code, to read as follows:

“(e) The powers and duties of the Division under this Section are subject to the powers and duties granted other entities in Title 20 of the Delaware Code. Provisions of Title 20 of the Delaware Code which conflict with provisions of this Section shall take precedence over this Section.”.

Section 9. Delete Title 16, Section 506 of the Delaware Code, and replace it with the following:

“§ 506. Due Process Rights of Quarantined Individuals.

The Division of Public Health shall afford persons who are quarantined pursuant to Section 505 of this Title the same due process rights as those afforded to persons who are quarantined pursuant to 20 Del. C. § 3138.”.

Section 10. Delete Title 16, Section 508 of the Delaware Code, and replace it with the following:

“§ 508. Tracking of Potential or Existing Public Health Emergencies.

The Division of Public Health shall ascertain the existence of cases of an illness or health condition which may be potential causes of a public health emergency; shall investigate all such cases for sources of

infection and to ensure that they are subject to proper control measures; and shall define the distribution of the illness or health condition. To fulfill these duties, the Division of Public Health shall identify exposed individuals as follows:

- (a) Acting on information developed in accordance with Section 130 of this Title, or other reliable information, the Division shall identify all individuals thought to have been exposed to an illness or health condition which may be potential causes of a public health emergency.
- (b) The Division shall counsel and interview such individuals as appropriate to assist in the positive identification of exposed individuals and develop information relating to the source and spread of the illness or health condition. Such information includes the name and address (including city and county) of any person from whom the illness or health condition may have been contracted and to whom the illness or health condition may have spread.
- (c) The Division shall close, evacuate, or decontaminate any facility or decontaminate or destroy any material when the Division reasonably suspects that such facility or material may endanger the public health.
- (d) An order of the Division given to effectuate the purposes of this Section shall be enforceable immediately.
- (e) Whenever any agency of the State learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event, it shall immediately notify the Division.
- (f) Whenever the Division learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that it reasonably believes has the potential to be caused by bioterrorism, it must immediately notify the public safety authority and federal health and public safety authorities.
- (g) To the extent practicable consistent with the protection of public health, prior to the destruction of any material under subsection (c), the Division shall institute appropriate civil proceedings against the material to be destroyed in accordance with the existing laws and rules of the Superior Court or any such rules that may be developed by the Superior Court. Additionally, persons whose property is destroyed pursuant to subsection (c) shall be entitled to seek compensation pursuant to and subject to the restrictions and procedures described in Title 20, Section 3148.
- (h) Definitions from Title 20, Section 3132 shall apply to this Section.”.

Section 11. Add a new Section 532 to Title 16 of the Delaware Code, to read as follows:

“§ 532. Health Emergencies.

The provisions of this subchapter are subject to the provisions of Title 20 of the Delaware Code. Provisions of Title 20 of the Delaware Code which conflict with provisions of this subchapter shall take precedence over this subchapter.”.

Section 12. Add a new Subchapter 3 to Title 16, Chapter 12 of the Delaware Code, to read as follows:

“Subchapter III: Confidentiality of Personal Health Information.

§ 1230. Definitions.

As used in this Subchapter, the following terms shall have the following meanings:

- (1) ‘Expunge’ or ‘expunged’ means to permanently destroy, delete, or make non-identifiable.
- (2) ‘Informed consent’ means a written authorization for the disclosure of protected health information on a form substantially similar to one promulgated by the Department of Health and Social Services which is signed in writing or electronically by the individual who is the subject of the information. This authorization shall be dated and shall specify to whom the disclosure is authorized, the general purpose for such disclosure, and the time period in which the authorization for the disclosure is effective.
- (3) ‘Legitimate public health purpose’ means a population-based activity or individual effort primarily aimed at the prevention of injury, disease, or premature mortality, or the promotion of health in the community, including:
 - (a) assessing the health needs of the community through public health surveillance and epidemiological research;
 - (b) developing public health policy; and
 - (c) responding to public health needs and emergencies.
- (4) ‘Protected health information’ means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form, that relates to an individual’s past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and that reveals the identity of the individual whose health care is the subject of the information, or where there is a reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

§ 1231. Use of Protected Health Information.

- (1) Protected health information collected by the Department of Health and Social Services and/or its agencies shall be used solely for legitimate public health purposes.
- (2) Non-identifiable health information shall be used by the Department of Health and Social Services and its agencies whenever possible consistent with the accomplishment of legitimate public health purposes.
- (3) Any use of protected health information permitted by this Subchapter shall be limited to the minimum amount of information which the official using the information reasonably believes is necessary to accomplish the legitimate public health purpose.
- (4) Protected health information shall not be used by the State for commercial purposes.
- (5) Protected health information whose use no longer furthers the legitimate public health purpose for which it was acquired shall be expunged.

§ 1232. Disclosure of Protected Health Information.

- (1) General Privacy Protection. Protected health information is not public information as defined at 29 Del. C. § 10002, and may not be disclosed without the informed consent of the individual (or the individual's lawful representative) who is the subject of the information, except as expressly provided by statute. Whenever disclosure of protected health information is made pursuant to this Subchapter, such disclosure shall be accompanied by a statement concerning the Department of Health and Social Services' disclosure policy.
- (2) Scope of Disclosure. Protected health information shall be disclosed with the informed consent of the individual who is the subject of the information to any person and for any purpose for which the disclosure is authorized pursuant to informed consent.
- (3) Non-identifiable Information. Any disclosure of protected health information permitted by this Subchapter shall be disclosed in a non-identifiable form whenever possible, consistent with the accomplishment of legitimate public health purposes, except when the disclosure is authorized through the informed consent of the person who is the subject of the information. Any disclosures of protected health information permitted by this Subchapter shall also be limited to the minimum amount of information which the person making the disclosure reasonably believes is necessary to

accomplish the purpose of the disclosure, except when the disclosure is authorized through the informed consent of the individual who is the subject of the information.

(4) Disclosure Without Informed Consent. Protected health information may be disclosed without the informed consent of the individual who is the subject of the information where such disclosures are made:

(a) directly to the individual;

(b) to appropriate federal agencies or authorities as required by federal or State law;

(c) to health care personnel to the extent necessary in an emergency to protect the health or life of the person who is the subject of the information from serious, imminent harm;

(d) to the public safety authority during a public health emergency; or

(e) pursuant to a court order to avert a clear danger to an individual or the public health.

(5) Deceased Individuals. Nothing in this Subchapter shall prohibit the disclosure of protected health information:

(a) in a certificate of death, autopsy report, or related documents prepared under applicable laws or regulations;

(b) for the purposes of identifying a deceased individual;

(c) for the purposes of determining a deceased individual's manner of death by a medical examiner; or

(d) to provide necessary information about a deceased individual who is a donor or prospective donor of an anatomical gift.

(6) Informed Consent by Others. When an individual who is the subject of protected health information is not competent or is otherwise legally unable to give informed consent for the disclosure of protected health information, informed consent may be given by the individual's parents, legal guardians, or other persons lawfully authorized to make health care decisions for the individual.

(7) Secondary Disclosures. No person to whom protected health information has been disclosed pursuant to this Act shall disclose the information to another person except as authorized by this Subchapter. This Section shall not apply to:

- 197 (a) the individual who is the subject of the information;
- 198 (b) the individual's parents, legal guardians, or other persons lawfully authorized to make health
- 199 care decisions for the individual where the individual who is the subject of the information is
- 200 unable to give legal consent pursuant to paragraph (6) of this subsection; or
- 201 (c) any person who is specifically required by federal or State law to disclose the information.”.

202 Section 13. Add a new subchapter to Title 20, Chapter 31 of the Delaware Code, to read as follows:

203 “Subchapter V. Public Health Emergencies.

204 § 3131. Findings.

205 The State of Delaware finds as follows:

- 206 (a) Government must do more to protect the health, safety, and general well being of the general
- 207 public.
- 208 (b) New and emerging dangers, including emergent and resurgent infectious diseases and incidents
- 209 of civilian mass casualties, pose serious and immediate threats.
- 210 (c) A renewed focus on the prevention, detection, management, and containment of public health
- 211 emergencies is called for.
- 212 (d) Emergency health threats, including those caused by bioterrorism and epidemics, require the
- 213 exercise of extraordinary government functions.
- 214 (e) Delaware must have the ability to respond, rapidly and effectively, to potential or actual public
- 215 health emergencies.
- 216 (f) The exercise of emergency health powers must promote the common good.
- 217 (e) Emergency health powers must be grounded in a thorough scientific understanding of public
- 218 health threats and disease transmission.
- 219 (f) The rights of people to liberty, bodily integrity, and privacy must be respected to the fullest
- 220 extent possible consistent with the overriding importance of the public's health and security.
- 221 (g) Guided by principles of justice, it is the duty of this State to act with fairness and tolerance
- 222 towards individuals and groups.
- 223 (h) This subchapter is necessary to protect the health and safety of the citizens of this State.

224 § 3132. Definitions.

The following terms shall have the indicated meanings when used in this subchapter.

- (a) 'Bioterrorism' is 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 biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population.
- (b) 'Chain of custody' means the methodology of tracking specimens for the purpose of maintaining control and accountability from initial collection to final disposition of the specimens and providing for accountability at each stage of collecting, handling, testing, storing, and transporting the specimens and reporting test results.
- (c) 'Contagious disease' is an infectious disease that can be transmitted from person to person, animal to person, or insect to person.
- (d) 'Health care facility' means any non-federal institution, building, or agency or portion thereof, whether public or private (for-profit or nonprofit) that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. This includes, but is not limited to: ambulatory surgical facilities, home health agencies, hospices, hospitals, infirmaries, intermediate care facilities, kidney treatment centers, long term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatments facilities, skilled nursing facilities, and adult day-care centers. The term also includes, but is not limited to, the following related property when used for or in connection with the foregoing: laboratories; research facilities; pharmacies; laundry facilities; health personnel training and lodging facilities; patient, guest, and health personnel food service facilities; and offices and office buildings for persons engaged in health care professions or services.
- (e) 'Health care provider' means any person or entity who provides health care services including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician assistants, nurse practitioners, registered

and other nurses, paramedics, emergency medical or laboratory technicians, and ambulance and emergency medical workers.

(f) 'Infectious disease' is a disease caused by a living organism or other pathogen, including a fungus, bacillus, parasite, protozoan, or virus. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.

(g) 'Infectious waste' means:

(i) 'biological waste' which includes blood and blood products, excretions, exudates, secretions, suctioning and other body fluids, and waste materials saturated with blood or body fluids;

(ii) 'cultures and stocks,' which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures, wastes from production of biologicals and serums, and discarded live and attenuated vaccines;

(iii) 'pathological waste,' which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals, but does not include teeth or formaldehyde or other preservative agents; and

(iv) 'sharps,' which includes needles, IV tubing with needles attached, scalpel blades, lancets, breakable glass tubes, and syringes that have been removed from their original sterile containers.

(h) 'Isolation' is the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals.

(i) 'Mental health support personnel' includes, but is not limited to, psychiatrists, psychologists, social workers, and volunteer crisis counseling groups.

(j) 'Protected health information' means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form, that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and that reveals the identity of the individual whose health care is the subject of the

information, or where there is a reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

- (k) 'Public health authority' means the Secretary of Health and Social Services or such person as he/she may designate with the Governor's consent.
- (l) A 'public health emergency' is an occurrence or imminent threat of an illness or health condition that:
 - (i) is believed to be caused by any of the following:
 - (A) bioterrorism;
 - (B) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin;
 - (C) a chemical attack or accidental release;
 - and
 - (ii) poses a high probability of any of the following harms:
 - (A) a large number of deaths in the affected population;
 - (B) a large number of serious or long-term disabilities in the affected population; or
 - (C) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.
- (m) 'Public safety authority' means the Director of the Delaware Emergency Management Agency or such other person as the Governor may designate.
- (n) 'Quarantine' is the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit the transmission of the disease to non-quarantined individuals.
- (o) 'Specimens' include, but are not limited to, blood, sputum, urine, stool, other bodily fluids, wastes, tissues, and cultures necessary to perform required tests.
- (p) 'Tests' include, but are not limited to, any diagnostic or investigative analyses necessary to prevent the spread of disease or protect the public's health, safety, and welfare.

§ 3133. Declaration of Public Health Emergency.

(a) If the Governor has specifically designated a State of Emergency declared pursuant to Section 3115 of this Title as a 'public health emergency', the public safety authority shall, in consultation with the public health authority, coordinate all matters pertaining to the public health emergency response of the State. The public safety authority shall have primary jurisdiction, responsibility, and authority for:

- (1) planning and executing public health emergency assessment, mitigation, preparedness response, and recovery for the State;
- (2) determining necessary steps to be taken with respect to dangerous facilities and materials;
- (3) determining which persons shall have access to and control of facilities, supplies, and property;
- (4) making determinations with respect to the proper disposal of human remains and infectious waste;
- (5) making determinations as to the sale, distribution, access to, and regulation of medical supplies;
- (6) coordinating public health emergency response between State and local authorities;
- (7) collaborating with relevant federal government authorities, elected officials of other states, private organizations, or private sector companies;
- (8) coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and
- (9) organizing public information activities regarding State public health emergency response operations.

(b) After the declaration of a state of public health emergency, the public safety authority shall consult with the public health authority in the execution of all of its duties described in this subchapter.

§ 3134. Control of Health Care Supplies.

335 The public health authority may purchase and distribute anti-toxins, serums, vaccines, immunizing
336 agents, antibiotics, and other pharmaceutical agents or medical supplies that it deems advisable in the interest of
337 preparing for or controlling a public health emergency, without any additional legislative authorization.

338 § 3135. Destruction of Property.

339 To the extent practicable consistent with the protection of public health, prior to the destruction of any
340 property under this Subchapter, the public safety authority or public health authority shall institute appropriate
341 civil proceedings against the property to be destroyed in accordance with the existing laws and rules of the
342 Superior Court or any such rules that may be developed by the Superior Court for use during a state of public
343 health emergency. Any property acquired by the public safety authority or public health authority through such
344 proceedings shall, after entry of the decree, be disposed of by destruction as the Court may direct. The public
345 safety authority's determination or public health authority's determination as to the practicability of instituting
346 civil proceedings prior to the destruction of property during a State of Emergency shall not be subject to judicial
347 injunction.

348 § 3136. Control of Individuals During Public Health Emergency.

349 If the Governor has specifically designated a State of Emergency declared pursuant to Section 3115 of
350 this Title as a 'public health emergency', the public safety authority shall use every available means to prevent
351 the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper
352 control and treatment.

353 § 3137. Medical Examination and Testing During Public Health Emergency.

354 If the Governor has specifically designated a State of Emergency declared pursuant to Section 3115 of
355 this Title as a 'public health emergency', the following rules shall apply:

- 356 (a) Medical examinations or tests may be performed by any qualified person authorized to do so by
357 the public safety authority.
- 358 (b) Medical examinations or tests must not be such as are reasonably likely to lead to serious harm to
359 the affected individual.
- 360 (c) The public safety authority may isolate or quarantine, subject to Section 3138, any person whose
361 refusal of medical examination or testing results in uncertainty regarding whether he or she has

362 been exposed to or is infected with a contagious or possibly contagious disease or otherwise
363 poses a danger to public health.

364 § 3138. Isolation and Quarantine During Public Health Emergency.

365 The following isolation and quarantine procedures shall be in effect if the Governor has specifically
366 designated a State of Emergency declared pursuant to Section 3115 of this Title as a ‘public health emergency’:

367 (a) General Authority. The public safety authority may exercise, for such period as the State of
368 public health emergency exists, the following emergency powers over persons:

369 (1) to establish and maintain places of isolation and quarantine;

370 (2) to isolate and quarantine individuals subject to the procedures enumerated in this Section;

371 and

372 (3) to require isolation or quarantine of any person by the least restrictive means necessary to
373 protect the public health, subject to the other provisions of this Section. All reasonable
374 means shall be taken to prevent the transmission of infection among the isolated or
375 quarantined individuals.

376 (b) Standard for Quarantine or Isolation.

377 (1) Persons shall be isolated or quarantined if it is determined by clear and convincing evidence
378 that the person to be quarantined poses a significant risk of transmitting a disease to others
379 with serious consequences. A person’s refusal to accept medical examination, vaccination,
380 or treatment pursuant to Sections 3142 and 3144 of this Title shall constitute *prima facie*
381 evidence that said person should be quarantined or isolated.

382 (2) Isolation or quarantine of any person shall be terminated when such person no longer poses a
383 significant risk of transmitting a disease to others with serious consequences.

384 (c) Character of Isolation and Quarantine Area.

385 (1) To the extent possible, the premises in which persons are isolated or quarantined shall be
386 maintained in safe and hygienic manners, designed to minimize the likelihood of further
387 transmission of infection or other harm to persons subject to isolation or quarantine.
388 Adequate food, clothing, medication, and other necessities, and competent medical care shall
389 be provided.

390 (2) Isolated individuals must be confined separately from quarantined individuals.

391 (3) The health status of isolated and quarantined individuals must be monitored regularly to
392 determine if their status should change. If a quarantined individual subsequently becomes
393 infected or is reasonably believed to have become infected with a contagious or possibly
394 contagious disease, he or she must promptly be moved to isolation.

395 (d) Control of Quarantine and Isolation Area.

396 (1) A person subject to isolation or quarantine shall obey the public safety authority's rules and
397 orders, shall not go beyond the isolation or quarantine premises, and shall not put himself or
398 herself in contact with any person not subject to isolation or quarantine other than a
399 physician or other health care provider, public health authority, or person authorized to enter
400 isolation or quarantine premises by the public safety authority. Failure to obey these
401 provisions shall constitute a misdemeanor. Any person entering isolation or quarantine
402 premises may be isolated or quarantined.

403 (2) No person, other than a person authorized by the public safety authority, shall enter isolation
404 or quarantine premises. If any person enters isolation or quarantine premises without
405 permission of the public safety authority, that person shall be liable for a misdemeanor. If, by
406 reason of an unauthorized entry into an isolation or quarantine premises, the person poses a
407 danger to public health, he or she may be subject to isolation or quarantine pursuant to the
408 provisions of this Section.

409 (e) Procedures for Isolation and Quarantine. The following procedures shall protect the due process
410 rights of Delawareans:

411 (1) The public safety authority may petition the Superior Court for an order authorizing the
412 isolation or quarantine of an individual or groups of individuals.

413 (2) A petition pursuant to subsection (i)(1) shall specify the following:

414 (aa) the identity of the individual(s) or groups of individuals subject to isolation or
415 quarantine;

416 (bb) the premises subject to isolation or quarantine;

417 (cc) the date and time at which isolation or quarantine commences;

(dd) the suspected contagious disease, if known;

(ee) a statement of compliance with the conditions and principles for isolation and quarantine; and

(ff) a statement of the basis upon which isolation or quarantine is justified.

(3) *Ex parte* orders. Before isolating or quarantining a person, the public safety authority shall obtain a written, *ex parte* order from the Superior Court authorizing such action. An *ex parte* order shall be requested as part of a petition filed in compliance with paragraphs (1) through (2) of this subsection. The Court shall grant such *ex parte* order upon finding that there is a reasonable likelihood that isolation or quarantine is warranted pursuant to the provisions of this Act. A copy of the authorizing order shall be given to the person isolated or quarantined, along with notification that the person has a right to a hearing under this paragraph.

(4) Temporary quarantine or isolation pending filing of a petition. Notwithstanding the preceding subparagraphs, the public safety authority may isolate or quarantine a person without first obtaining a written *ex parte* order from the Court if any delay in the isolation or quarantine of the person would pose an immediate threat to the public health. Following such isolation or quarantine, the public health authority shall file a petition pursuant to paragraphs (1) through (3) of this subsection within twenty-four hours. If the public safety authority exercises its powers under this subsection, it must provide a written directive indicating the identities of the individuals or groups subject to the directive, the premises subject to isolation or quarantine, the date and time that the directive commences, the suspected contagious disease (if known), and a copy of Section 3138 of this Title.

(5) Speedy hearing. The Court shall grant a hearing within seventy-two hours of the filing of a petition when an individual has been isolated or quarantined pursuant to paragraphs (3) or (4) of this subsection.

(6) Consolidation of claims. The Court may order consolidation of individual claims into a group of claims where:

(i) the number of individuals involved or to be affected is so large as to render individual participation impractical;

- 446 (ii) there are questions of law or fact common to the individual claims or rights to be
447 determined;
- 448 (iii) the group claims or rights to be determined are typical of the affected individuals’
449 claims or rights; and
- 450 (iv) the entire group will be adequately represented in the consolidation, giving due regard to
451 the rights of affected individuals.

452 (f) Relief for Isolated and Quarantined Persons.

- 453 (1) On or after thirty days following a hearing as is provided for in this subparagraph, a person
454 isolated or quarantined pursuant to the provisions of this Section may request in writing a
455 Court hearing to contest his or her continued isolation or quarantine. The hearing shall be
456 held within seventy-two hours of receipt of such request, excluding Saturdays, Sundays and
457 legal holidays. A request for a hearing shall not alter the order of isolation or quarantine. At
458 the hearing, the public safety authority must show that continuation of the isolation or
459 quarantine is warranted pursuant to the provisions of this Section.
- 460 (2) A person isolated or quarantined pursuant to the provisions of this Section may request a
461 hearing in the Superior Court for remedies regarding his or her treatment and the terms and
462 conditions of such quarantine or isolation. Upon receiving a request for either type of
463 hearing described in this subparagraph, the Court shall fix a date for a hearing. The hearing
464 shall take place within ten days of the receipt of the request by the Court. The request for a
465 hearing shall not alter the order of isolation or quarantine.
- 466 (3) If, upon a hearing, the Court finds that the isolation or quarantine of the individual is not
467 warranted under the provisions of this Section, then the person shall be released from
468 isolation or quarantine. If the Court finds that the isolation or quarantine of the individual is
469 not in compliance with the provisions of subsection (c), the Court may then fashion remedies
470 appropriate to the circumstances of the state of public health emergency and in keeping with
471 the provisions of this Act.

472 (g) Additional Due Process Protections.

- 473 (1) A record of proceedings before the Court shall be made and retained.

- 474 (2) The petitioner shall have the right to be represented by counsel or other lawful
475 representative, and the State shall provide counsel to indigent persons against whom
476 proceedings are initiated.
- 477 (3) The manner in which the request for a hearing is filed and acted upon will be in accordance
478 with the existing laws and rules of the Superior Court or any such rules that are developed by
479 the Courts for use during a state of public health emergency, provided that hearings should
480 be held by any means that will allow all necessary persons to participate in the event that a
481 public health emergency makes personal appearances impractical.

482 § 3139. Vaccination and Treatment During Public Health Emergency.

483 If the Governor has specifically designated a State of Emergency declared pursuant to Section 3115 of
484 this Title as a 'public health emergency', the public safety authority may exercise, for such period as the state of
485 public health emergency exists, the following emergency powers:

- 486 (a) To direct vaccination of persons as protection against infectious disease and to prevent the spread
487 of contagious or possibly contagious disease.
- 488 (1) Vaccination may be performed by any qualified person authorized to do so by the public
489 safety authority.
- 490 (2) A vaccine to be administered must not be such as is reasonably likely to lead to serious harm
491 to the affected individual.
- 492 (3) To prevent the spread of contagious or possibly contagious disease, the public safety
493 authority may isolate or quarantine, subject to Section 3138, persons who are unable or
494 unwilling for reasons of health, religion, or conscience to undergo vaccination pursuant to
495 this Section.
- 496 (b) To direct treatment of persons exposed to or infected with disease:
- 497 (1) Treatment may be administered by any qualified person authorized to do so by the public
498 safety authority.
- 499 (2) Treatment must not be such as is reasonably likely to lead to serious harm to the affected
500 individual.

501 (3) To prevent the spread of contagious or possibly contagious disease, the public safety
502 authority may isolate or quarantine, subject to Section 3138, persons who are unable or
503 unwilling for reasons of health, religion, or conscience to undergo treatment pursuant to this
504 Section.

505 § 3140. Collection of Laboratory Specimens; Performance of Tests During Public Health Emergency.

506 If the Governor has specifically designated a State of Emergency declared pursuant to Section 3115 of
507 this Title as a 'public health emergency', the public health authority may, for such period as the state of public
508 health emergency exists, collect specimens and perform tests on any person or animal, living or deceased, and
509 acquire any previously collected specimens or test results that are reasonable and necessary for emergency
510 response.

511 (a) All specimens shall be clearly marked.

512 (b) Specimen collection, handling, storage, and transport to the testing site shall be performed in a
513 manner that will reasonably preclude specimen contamination or adulteration and provide for the
514 safe collection, storage, handling, and transport of such specimen.

515 (c) Any person authorized to collect specimens or perform tests shall use chain of custody
516 procedures to ensure proper record keeping, handling, labeling, and identification of specimens to
517 be tested. This requirement applies to all specimens, including specimens collected using on-site
518 testing kits.

519 (d) Recognizing that, during a state of public health emergency, any specimen collected or test
520 performed may be evidence in a criminal investigation, any business, facility, or agency
521 authorized to collect specimens or perform tests shall provide such support as is reasonable and
522 necessary to aid in a relevant criminal investigation.

523 § 3141. Confidentiality of Medical Information.

524 Protected health information gathered during a public health emergency shall be subject to the
525 provisions of Title 16, Subchapter III of the Delaware Code.

526 § 3142. Licensing and Appointment of Health Personnel During Public Health Emergency.

527 If the Governor has specifically designated a State of Emergency declared pursuant to Section 3115 of
528 this Title as a 'public health emergency', the public health authority may exercise, for such period as the state of
529 public health emergency exists, the following emergency powers regarding licensing of health personnel:

530 (a) To require in-state health care providers to assist in the performance of vaccination, treatment,
531 examination, or testing of any individual as a condition of licensure, authorization, or the ability
532 to continue to function as a health care provider in this State;

533 (b) To appoint and prescribe the duties of such out-of-state emergency health care providers as may
534 be reasonable and necessary for emergency response.

535 (1) The appointment of out-of-state emergency health care providers pursuant to this Section
536 may be for a limited or unlimited time, but shall not exceed the termination of the state of
537 public health emergency. The public health authority may terminate the out-of-state
538 appointments at any time or for any reason provided that any such termination will not
539 jeopardize the health, safety, and welfare of the people of this State.

540 (2) The public health authority may waive any or all licensing requirements, permits, or fees
541 required by the State code and applicable orders, rules, or regulations for health care
542 providers from other jurisdictions to practice in this State.

543 (3) Any out-of-state emergency health care provider appointed pursuant to this Section shall be
544 considered a public employee under 10 Del. C. §§ 4001-4002;

545 (c) To authorize the medical examiner to appoint and prescribe the duties of such emergency
546 assistant medical examiners as may be required for the proper performance of the duties of the
547 office.

548 (1) The appointment of emergency assistant medical examiners pursuant to this Section may be
549 for a limited or unlimited time, but shall not exceed the termination of the state of public
550 health emergency.

551 (2) The medical examiner may waive any or all licensing requirements, permits, or fees required
552 by the State code and applicable orders, rules, or regulations for the performance of these
553 duties.

(3) Any emergency assistant medical examiner appointed pursuant to this Section shall be considered a public employee under 10 Del. C. §§ 4001-4002.

§ 3143. Public Health Emergency Planning Commission.

The Public Health Emergency Planning Commission ('the Commission') shall consist of the following voting members:

- (a) the Governor;
- (b) the Speaker of the House of Representatives;
- (c) the President Pro Tempore of the State Senate;
- (d) the Secretary of Health and Social Services;
- (e) the Secretary of Public Safety;
- (f) the Secretary of the Department of Natural Resources and Environmental Control;
- (g) the Secretary of Agriculture;
- (h) the Adjutant General of the Delaware National Guard;
- (i) the Chief Justice of the Delaware Supreme Court;
- (j) the Director of the Delaware Emergency Management Agency; and
- (k) a representative of the Delaware medical community or their designees.

The Secretary of Health and Social Services or his or her designee shall serve as the Chair of the Commission. The Governor shall also appoint representatives of affected constituencies, including the medical community, local health departments and governments, local police, fire, and emergency medical service agencies, community health centers, and volunteer organizations as *ex officio* members of the Commission.

§ 3144. Public Health Emergency Plan.

- (a) The Commission shall, within three months of the enactment of this legislation into law, deliver to the Governor a plan for responding to a public health emergency, that includes provisions for the following:
 - (1) A means of notifying and communicating with the population during a state of public health emergency in compliance with this Act, including a plan that ensures that 90% of the population is covered by a Health Alert Network;

- 581 (2) Centralized coordination of resources, manpower, and services, including coordination of
582 responses by State, local, and federal agencies;
- 583 (3) The location, procurement, storage, transportation, maintenance, and distribution of
584 essential materials, including medical supplies, drugs, vaccines, food, shelter, and beds,
585 including a plan (with identified personnel to be trained) to receive and distribute critical
586 stockpile items and manage a mass distribution of vaccine and/or antibiotics on a twenty-
587 four hours a day, seven days a week basis;
- 588 (4) The continued, effective operation of the judicial system including, if deemed necessary,
589 the identification and training of personnel to serve as emergency judges regarding matters
590 of isolation and quarantine as described in this Act;
- 591 (5) The method of evacuating populations, and housing and feeding the evacuated
592 populations;
- 593 (6) The identification and training of health care providers to diagnose and treat persons with
594 infectious diseases, including a review of statutes, regulations, and ordinances that provide
595 for credentialing, licensure, and delegation of authority for executing emergency public
596 health measures;
- 597 (7) Guidelines for the vaccination of persons, in compliance with the provisions of this Act;
- 598 (8) Guidelines for the treatment of persons who have been exposed to or who are infected
599 with diseases or health conditions caused by bioterrorism, epidemic or pandemic disease,
600 or novel and highly fatal infectious agents or biological toxins, that pose a substantial risk
601 of a significant number of fatalities or incidents of permanent or long-term disability. The
602 guidelines should cover, but not be limited to, the following diseases: anthrax, botulism,
603 smallpox, plague, tularemia, and viral hemorrhagic fevers;
- 604 (9) Guidelines for the safe disposal of human remains, in compliance with the provisions of
605 this Act;
- 606 (10) Guidelines for the safe disposal of infectious waste, in compliance with the provisions of
607 this Act;

- 608 (11) Guidelines for the safe and effective management of persons isolated, quarantined,
609 vaccinated, or treated during a state of public health emergency;
- 610 (12) Tracking the source and outcomes of infected persons, including a plan to receive and
611 evaluate urgent disease reports from all parts of the State on a twenty-four hour a day,
612 seven days a week basis;
- 613 (13) Ensuring that each county and city within the State identifies the following:
- 614 (i) sites where persons can be isolated or quarantined, with such sites complying with the
615 provisions of this Act regarding the least restrictive means for isolation and
616 quarantine, and the requirements for the safety, health and maintenance of personal
617 dignity of those isolated or quarantined;
- 618 (ii) sites where medical supplies, food, and other essentials can be distributed to the
619 population;
- 620 (iii) sites where emergency workers can be housed and fed;
- 621 (iv) routes and means of transportation of people and materials;
- 622 (14) Coordination with other states and the federal government;
- 623 (15) Taking into account cultural norms, values, and traditions that may be relevant;
- 624 (16) Distribution of this plan and guidelines to those who will be responsible for implementing
625 the plan;
- 626 (17) Development of a plan to improve working relationships and communications between
627 Level A (clinical) and Level B/C laboratories (i.e. Laboratory Response Network
628 laboratories) as well as other public health officials;
- 629 (18) Development of a plan for communication systems that provide for a 24 hour a day, seven
630 day a week flow of critical health information between hospital emergency departments,
631 State and local health officials, and law enforcement;
- 632 (19) Development of a plan to enhance risk communication and information dissemination to
633 educate the public regarding exposure risks and effective public response; and
- 634 (20) Other measures necessary to carry out the purposes of this Act.

- (b) The Commission shall review its plan for responding to a public health emergency every two years.
- (c) The Commission's plan shall serve as a Statewide plan and a regional plan with respect to federal bioterrorism requirements.
- (d) Persons responsible for implementing the Commission's plan should receive appropriate and timely training, and the Commission's plan should be tested on a regular basis.
- (e) The Commission shall establish a hospital bio-preparedness planning subcommittee, whose composition shall include representation from DEMA, the Department of Health and Social Services, the medical community, and local emergency medical services.

§ 3145. Rules and Regulations.

The public health authority and Department of Public Safety are authorized to promulgate and implement such rules and regulations as are reasonable and necessary to implement and effectuate the provisions of this Subchapter. The public health authority and public safety authority shall have the power to enforce the provisions of this Subchapter through the imposition of fines and penalties, the issuance of orders, and such other remedies as are provided by law, but nothing in this Subchapter shall be construed to limit specific enforcement powers enumerated in this Subchapter.

§ 3146. Financing and Expenses.

- (a) If the Governor has specifically designated a State of Emergency declared pursuant to Section 3115 of this Title as a 'public health emergency', the Governor may transfer from any fund available to the Governor in the State Treasury such sums as may be necessary to meet the public health emergency.
- (b) Monies so transferred shall be repaid to the fund from which they were transferred when monies become available for that purpose, by legislative appropriation or otherwise.

§ 3147. Liability.

- (a) If the Governor has specifically designated a State of Emergency declared pursuant to Section 3115 of this Title as a 'public health emergency', any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or

premises for the purpose of sheltering persons, together with that person's successors in interest, if any, shall be considered a public employee under 10 Del. C. §§ 4001-4002.

- (b) If the Governor has specifically designated a State of Emergency declared pursuant to Section 3115 of this Title as a 'public health emergency', any private person, firm or corporation and employees and agents of such person, firm or corporation in the performance of a contract with, and under the direction of, the State or its political subdivisions under the provisions of this subchapter shall be considered a public employee under 10 Del. C. §§ 4001-4002 for acts taken consistent with this subchapter.
- (c) If the Governor has specifically designated a State of Emergency declared pursuant to Section 3115 of this Title as a 'public health emergency', any private person, firm or corporation and employees and agents of such person, firm or corporation, who renders assistance or advice at the request of the State or its political subdivisions under the provisions of this subchapter shall be considered a public employee under 10 Del. C. §§ 4001-4002.
- (d) The immunities provided in this Section shall not apply to any private person, firm, or corporation or employees and agents of such person, firm, or corporation whose act or omission caused, in whole or in part, the public health emergency and who would otherwise be liable therefor.

§ 3148. Compensation.

- (a) The State shall pay just compensation to the owner of any private facilities or materials that are lawfully taken or appropriated by the public safety authority or public health authority for their temporary or permanent use under this Subchapter during a public health emergency. State compensation shall not be provided for facilities or materials that are closed, evacuated, decontaminated, or destroyed when there is reasonable cause to believe that they may endanger the public health. Except as otherwise indicated in this Chapter, 'just compensation' shall be used in the same manner that it is used in Title 10, Chapter 61 of the Delaware Code.
- (b) Any action against the State with regard to the payment of compensation shall be brought in the Superior Court of the State of Delaware in the county in which the property is alleged to have

690 been taken or appropriated, in accordance with existing Superior Court rules, or any such rules
691 that may be developed by the Courts for use during a state of public health emergency.

692 (c) The amount of compensation shall be calculated in the same manner as compensation due for
693 taking of property pursuant to non-emergency eminent domain procedures, except that the
694 amount of compensation calculated for confiscated supplies or materials shall not exceed the
695 costs incurred to produce the items.

696 § 3149. Saving clause.

697 This Subchapter does not explicitly preempt other State laws or regulations that preserve to a greater
698 degree the powers of the Governor or public health authority, provided such laws or regulations are consistent,
699 and do not otherwise restrict or interfere, with the operation or enforcement of the provisions of this Subchapter.
700 The powers assigned to the Governor, public safety authority, and public health authority by this Subchapter
701 supplement and do not derogate the Governor's powers under Subchapters III and IV of this Title.

702 § 3150. Conflicting laws.

703 (a) This Act does not restrict any person from complying with federal law or regulations.

704 (b) In the event of a conflict between this Act and other State or local laws or regulations concerning
705 public health powers, the provisions of this Act apply.”.

706 Section 14. Severability.

707 The provisions of this Act are severable. If any provision of this Act or its application to any person or
708 circumstances is held invalid in a federal or State Court having jurisdiction, the invalidity will not affect other
709 provisions or applications of this Act that can be given effect without the invalid provision or application.

710 Section 15. The provisions of this Act shall take effect upon signature of the Governor.

SYNOPSIS

This statute is designed to clarify the Government's emergency authority during public health emergencies—authority that already exists in general form in the State's existing emergency powers statute. It is also designed to specifically enumerate procedures that would be used during a public health emergency to exercise those powers. The legislation:

- (a) expands and clarifies the duties of health care providers to report medical conditions that could lead to a public health emergency;
- (b) Requires pharmacists to report prescription-related events that could lead to a public health emergency;
- (c) Requires persons who deal with animals to report events that could lead to a public health emergency;
- (d) Clarifies procedures for the Division of Public Health to track potential public health emergencies;
- (e) Clarifies the Governor's emergency powers in the event of a public health emergency, including the control of dangerous facilities and materials, the safe disposal of infectious materials, the safe and respectful disposal of human remains, the availability of health care supplies, and the ability to implement effective vaccination,

- testing, and treatment programs;
- (f) Establishes the procedures for quarantining and isolating individuals, with appropriate due process protections;
- (g) Establishes the procedures for compensation of persons whose property is damaged or confiscated during a public health emergency;
- (h) Establishes procedures for the protection of personal health information gathered during a public health emergency; and
- (i) Requires the creation of a more detailed public health emergency plan.