

Appendix E – Excerpt from Model State Emergency Health Powers Act

Source: The Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities. (2001) Model State Emergency Health Powers Act retrieved March 23, 2007 at <http://www.publichealthlaw.net/Resources/Modellaws.htm>

The Model State Emergency Health Powers Act (Model Act) grants specific emergency powers to State governors and public health authorities in the event of a large public health emergency. The Model Act was developed for the Centers for Disease Control by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities to ensure an effective response to large-scale emergency health threats while protecting the rights of individuals. It provides a broad set of powers for an entity called the Public Health Authority.

As it may relate to altered standards of care, the Model Act provides that a declaration of an emergency activates the disaster response and recovery aspects of State, local and interjurisdictional disaster emergency plans. There is no mention of local-level involvement. The Public Health Authority is empowered to take control over facilities (health care and other) and "materials," such as food, fuel, clothing and other commodities, and roads. It may control health care supplies by rationing resources; establishing priority distribution to health care providers, disaster response personnel and mortuary staff; and establishing a general distribution to all others. It may establish and enforce quarantine and other infection control measures.

The following provisions of the Model Act have provoked considerable discussion among public health scholars and practitioners:

Quarantine: "Special Powers" of the Public Health Authority apply to: performing physical examinations, necessary tests, and/or vaccination. Any person refusing examination, tests, or vaccination may be isolated or quarantined. These sections (§601, §603) have been subject to media and public scrutiny. States have designed widely differing solutions. However, the Model act has helped to modernize State laws on quarantine and encourages greater consistency among State laws regarding quarantine provisions.

Liability: Health care providers are not held liable for any civil damages, except in cases where they are found to be negligent in treating or in failing to provide treatment. This includes out-of-State health care providers for whom relevant permits to practice have been waived by the Public Health Authority. The Model Act also explicitly states that except in cases of gross negligence or willful misconduct, the State (and the State and local officials specified in the act) is not liable for any property damage, death, or injury incurred as a result of complying with the Act (§804(a)).

Compelling Provider Participation: The Model Act states (§608(a)) that the Public Health Authority can compel in-State health care providers to assist in vaccination, testing, treatment, or examination of an individual as a licensure condition.

Other Provisions: Other provisions of the Model Act include the use of otherwise protected private medical information, public information obligations, access to mental health services and personnel, compensation for private property (calculated according to non-emergency eminent domain procedures) and reimbursement for health care supplies.