

AN ACT

RELATING TO PUBLIC HEALTH EMERGENCIES; ENACTING THE PUBLIC HEALTH  
EMERGENCY RESPONSE ACT; PROVIDING PROCEDURES FOR DECLARING AND  
RESPONDING TO A PUBLIC HEALTH EMERGENCY; PROVIDING CIVIL PENALTIES;  
DECLARING AN EMERGENCY.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to  
read:

"SHORT TITLE.--This act may be cited as the "Public Health Emergency  
Response Act"."

Section 2. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to  
read:

"PURPOSES OF ACT.--The purposes of the Public Health Emergency  
Response Act are to:

A. provide the state of New Mexico with the ability to manage public  
health emergencies in a manner that protects civil rights and the liberties of individual  
persons;

B. prepare for a public health emergency; and

C. provide access to appropriate care, if needed, for an indefinite  
number of infected, exposed or endangered people in the event of a public health  
emergency."

Section 3. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to  
read:

"DEFINITIONS.--As used in the Public Health Emergency Response Act:

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A. "attorney general" means the attorney general for the state of New Mexico;

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B. "court" means the district court for the judicial district where a public health emergency is occurring, the district court for Santa Fe county or, in the event that a district court cannot adequately provide services, a district court designated by the New Mexico supreme court;

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C. "director" means the director of homeland security;

D. "health care supplies" means medication, durable medical equipment, instruments, linens or any other material that the state of New Mexico may need to use in a public health emergency, including supplies for preparedness, mitigation and recovery;

E. "health facility" means:

(1) a facility licensed by the state of New Mexico pursuant to the provisions of the Public Health Act;

(2) a non-federal facility or building, whether public or private, for-profit or nonprofit, that is used, operated or designed to provide health services, medical treatment, nursing services, rehabilitative services or preventive care;

(3) a federal facility, when the appropriate federal entity provides its consent; or

(4) the following properties when they are used for, or in connection with, health-related activities:

(a) laboratories;

(b) research facilities;

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|   | (c) pharmacies;   | H<br>B           |
|   | (d) laundry facilities;                                 | 2                |
|   | (e) health personnel training and lodging facilities;   | 3                |
|   | (f) patient, guest and health personnel food service    | 1                |
| facilities; and                         |   | P<br>a<br>g<br>e |
|   | (g) offices or office buildings used by persons engaged | 3                |
| in health care professions or services; |   |                  |

F. "isolation" means the physical separation for possible medical care of persons who are infected or who are reasonably believed to be infected with a threatening communicable disease or potential threatening communicable disease from non-isolated persons, to protect against the transmission of the threatening communicable disease to non-isolated persons;

G. "public health emergency" means the occurrence or imminent threat of exposure to an extremely dangerous condition or a highly infectious or toxic agent, including a threatening communicable disease, that poses an imminent threat of substantial harm to the population of the state of New Mexico or any portion thereof;

H. "public health official" means the secretary of health or his designee, including a qualified public individual or group or a qualified private individual or group, as determined by the secretary of health;

I. "quarantine" means the precautionary physical separation of persons who have or may have been exposed to a threatening communicable disease or a potentially threatening communicable disease and who do not show signs or symptoms of a threatening communicable disease, from non-quarantined persons, to protect against the transmission of the disease to non-quarantined persons;

- J. "secretary of health" means the secretary of health or his designee; H  
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- K. "secretary of public safety" means the secretary of public safety or 2  
his designee; and 3  
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- L. "threatening communicable disease" means a disease that causes a  
death or great bodily harm that passes from one person to another and for which there g  
are no means by which the public can reasonably avoid the risk of contracting the e  
disease. "Threatening communicable disease" does not include acquired immune 4  
deficiency syndrome or other infections caused by the human immunodeficiency virus."

Section 4. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"ENHANCED PUBLIC HEALTH ADVISORY.--

A. The governor, after consultation with the secretary of health, may issue an enhanced public health advisory if the governor has reasonable cause to believe that a public health emergency may occur.

B. The secretary of health may use powers and duties conferred under the Public Health Act to investigate the conditions leading to the issuance of the enhanced public health advisory.

C. The enhanced public health advisory shall be broadly disseminated in English, Spanish and other appropriate languages to the impacted population."

Section 5. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"DECLARING A STATE OF PUBLIC HEALTH EMERGENCY--TERMINATING THE EMERGENCY.--

A. A state of public health emergency may be declared by the

governor upon the occurrence of a public health emergency. Prior to a declaration of a state of public health emergency, the governor shall consult with the secretary of health. The governor shall authorize the secretary of health, the secretary of public safety and the director to coordinate a response to the public health emergency.

B. A state of public health emergency shall be declared in an executive order that specifies:

- (1) the nature of the public health emergency;
- (2) the political subdivisions or geographic areas affected by the public health emergency;
- (3) the conditions that caused the public health emergency;
- (4) the expected duration of the public health emergency, if less than thirty days;
- (5) the public health officials needed to assist in the coordination of a public health emergency response; and
- (6) any other provisions necessary to implement the executive order.

C. A declaration of a state of public health emergency shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

D. A declaration of a state of public health emergency shall be terminated:

- (1) by the governor, after consultation with the secretary of health, upon determining that there is no longer a public health emergency; or
- (2) automatically after thirty days, unless renewed by the governor after consultation with the secretary of health.

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E. Upon the termination of a state of public health emergency, the secretary of health shall consult with the secretary of public safety and the director to ensure public safety during termination procedures."

Section 6. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"SPECIAL POWERS DURING A PUBLIC HEALTH EMERGENCY.--

A. In order to protect the health, safety and welfare of the people in the state during a public health emergency, the secretary of health, in coordination with the secretary of public safety and the director, may:

(1) utilize, secure or evacuate health care facilities for public use; and

(2) inspect, regulate or ration health care supplies as provided in Subsection B of this section.

B. If a public health emergency results in a statewide or regional shortage of health care supplies, the secretary of health may control, restrict and regulate the allocation, sale, dispensing or distribution of health care supplies.

C. The state medical investigator, after consultation with the secretary of health, the secretary of public safety, the director and the chairman of the board of thanatopractice, may implement and enforce measures to provide for the safe disposal of human remains that may be reasonable and necessary to respond to a public health emergency. The measures may include special provisions for embalming, burial, cremation, interment, disinterment, transportation and disposal of human remains. To the extent possible, the religious, cultural, family and individual beliefs of a deceased person or of the family of a deceased person shall be considered when disposing of

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human remains."

Section 7. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"PROCEDURES FOR ISOLATION OR QUARANTINE OF PERSONS.--

A. Except as provided in Section 9 of the Public Health Emergency Response Act, before isolating or quarantining a person during a declared public health emergency, the secretary of health shall apply for and obtain a written, ex parte order from a court that authorizes the isolation or quarantine. Notice of the application for the ex parte order shall be given, unless it clearly appears from specific facts shown that immediate and irreparable injury, loss or damage will result before an affected person can be heard in opposition to the application. The evidence or testimony in support of the application may be presented or taken by telephone, facsimile transmission, video equipment or other method of electronic communication. The court shall grant the application for an ex parte order upon finding that clear and convincing evidence exists to believe isolation or quarantine is warranted to respond to the public health emergency.

B. The ex parte order shall:

- (1) state the specific facts justifying isolation or quarantine;
- (2) state the persons, group or class of persons affected by the ex parte order;
- (3) state that the persons being isolated or quarantined have a right to a court hearing under the Public Health Emergency Response Act and a right to be represented by counsel at the hearing; and
- (4) be served as soon as practicable to persons isolated or

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quarantined.

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C. The secretary of health shall coordinate with the secretary of public safety and the director regarding execution of the ex parte order. The ex parte order shall be posted in a public and accessible place. If individual notice is not feasible, the secretary of health, the secretary of public safety and the director shall use the best means available to ensure that a person subject to the ex parte order is informed of the order and his rights.

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D. A person who is isolated or quarantined may request a court hearing pursuant to Section 10 of the Public Health Emergency Response Act at any time before the expiration of the ex parte order. A person shall not be isolated or quarantined pursuant to an ex parte order for longer than five days without a court hearing to determine whether isolation or quarantine should continue.

E. The isolation or quarantine of a person shall terminate automatically on the expiration date of a court order authorizing isolation or quarantine, or before the expiration date of the court order, upon notice to the court, if the secretary of health determines that isolation or quarantine is no longer necessary to protect the public."

Section 8. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"ISOLATION OR QUARANTINE AUTHORIZED--PROTECTION OF A PERSON ISOLATED OR QUARANTINED.--

A. The secretary of health may isolate or quarantine a person as necessary during a public health emergency, using the procedures set forth in the Public Health Emergency Response Act.

B. The secretary of health, the secretary of public safety, the director



and anyone acting under the secretaries' or the director's authority, when isolating or quarantining a person during a public health emergency, shall ensure that:

(1) isolation or quarantine shall be by the least restrictive means necessary to protect against the spread of a threatening communicable disease or a potentially threatening communicable disease to others and may include confinement to a private home or other private or public premises;

(2) isolated persons are confined separately from quarantined persons;

(3) the health status of an isolated or quarantined person is monitored regularly to determine if he requires continued isolation or quarantine. To adequately address emergency health situations, an isolated or quarantined person shall be given a reliable means to communicate twenty-four hours a day with health officials and to summon emergency health services;

(4) if a quarantined person subsequently becomes infected or is reasonably believed to be infected with a threatening communicable disease or a potentially threatening communicable disease, he shall be isolated pursuant to the provisions of the Public Health Act or the Public Health Emergency Response Act;

(5) the needs of a person isolated or quarantined be addressed in a systematic and orderly manner, including the provision of adequate food, clothing, shelter, sanitation, and to the extent of available resources, appropriate medication and treatment, medical care and mental health care;

(6) there are methods of communication available to a person placed in isolation or quarantine so that he may communicate with others, including family members, household members, legal representatives, advocates and the media.

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Accommodations shall also be made for religious worship or practice and updates on the status of the public health emergency, as available;

(7) the premises used for isolation or quarantine are maintained in a safe and hygienic manner and are designed to minimize the likelihood of further transmission of infection or other injury to other persons who are isolated or quarantined; and

(8) to the extent feasible, forms are provided to a person in isolation or quarantine that document the person's consent or objection to the isolation or quarantine.

C. A person isolated or quarantined pursuant to the provisions of the Public Health Emergency Response Act has the right to refuse medical treatment, testing, physical or mental examination, vaccination, specimen collections and preventive treatment programs. A person who has been directed by the secretary of health to submit to medical procedures and protocols because the person is infected with, reasonably believed to be infected with, or exposed to a threatening communicable disease and who refuses to submit to the procedures and protocols may be subject to continued isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act.

D. A person not authorized by the secretary of public safety, the secretary of health or the director shall not enter an isolation or quarantine area. If, by reason of an unauthorized entry into an isolation or quarantine area, a person poses a danger to public health, the person may be subject to isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act.

E. A household or family member of a person isolated or quarantined

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has a right to choose to enter an isolation or quarantine area. The secretary of public safety, the secretary of health or the director shall permit the household or family member entry into the isolation or quarantine area if the household or family member signs a consent form stating that the member has been informed of the potential health risks, isolation and quarantine guidelines and the consequences of entering the area. The household or family member shall not hold the state of New Mexico responsible for any consequences by reason of entry into the isolation or quarantine area. A household or family member who enters the area, at the discretion of the public health official, may be subject to isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act."

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Section 9. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"TEMPORARY HOLD UPON SECRETARY'S ORDER.--

A. If the secretary of health makes a finding that a delay in isolating or quarantining a person will significantly jeopardize the secretary's ability to prevent or limit the transmission of a threatening communicable disease, then the secretary of health may, by public health order, isolate or quarantine a person without first obtaining a written, ex parte order from a court.

B. Following the imposition of isolation or quarantine pursuant to Subsection A of this section, the secretary of health, within twenty-four hours of the imposition, shall apply for an ex parte order that authorizes the isolation or quarantine and shall follow the procedures and meet the standards set forth in Sections 7, 8 and 10 of the Public Health Emergency Response Act.

C. In a subsequent application to a court, the secretary of health shall

present facts in support of the need to issue a temporary hold before obtaining the ex parte order from the court that authorizes the isolation or quarantine."

Section 10. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"COURT HEARING TO CONTEST ISOLATION OR QUARANTINE.--

A. A person who is isolated or quarantined under a temporary hold, ex parte order or court order may petition the court to contest the temporary hold, ex parte order or court order at any time prior to the expiration of the temporary hold, ex parte order or court order. If a petition is filed, the court shall hold a hearing within three business days after the date of the filing. The filing of a petition for a hearing does not stay an order of isolation or quarantine. At the hearing, the secretary of health shall offer clear and convincing evidence that the isolation or quarantine is warranted to respond to a public health emergency.

B. If the secretary of health wishes to extend an order for isolation or quarantine past the period of time stated in the temporary hold, ex parte order or court order, the secretary of health shall petition the court for an extension. Notice of the hearing shall be served to every person who is isolated or quarantined at least three days prior to the hearing. If it is not feasible to provide individual notice to every person isolated or quarantined, a copy of the notice shall be posted in a public and accessible place, using the best means available to ensure that every person subject to the order is informed of the order and their rights.

C. The hearing notice shall contain:

- (1) the date, time and place of the hearing;
- (2) the grounds upon which continued isolation or quarantine is

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sought;

(3) the person's right to appear at the hearing; and

(4) the person's right to counsel, including the right, if indigent,

to be represented by counsel designated by the court.

D. The court may order an extension of the isolation or quarantine if it finds, by clear and convincing evidence, that there is an imminent health threat to others if the isolation or quarantine is terminated.

E. In no case shall the isolation or quarantine continue longer than thirty days from the date of a court order, unless the secretary of health petitions the court for an extension pursuant to the standards and procedures set forth in this section.

F. Upon notice to a court by the secretary of health that the conditions warranting isolation or quarantine no longer exist, the court shall issue an order terminating the isolation or quarantine."

Section 11. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"HEARING ON CONDITIONS OF ISOLATION AND QUARANTINE.--

A. A person who is isolated or quarantined may request a hearing in court, as provided in Section 10 of the Public Health Emergency Response Act, for remedies regarding treatment or the terms and condition of the isolation or quarantine.

B. Upon receiving a request for a hearing pursuant to this section, the court shall fix a date for a hearing within seven days of the court's receipt of the request.

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C. A request for a hearing does not alter an order for isolation or quarantine. If the court finds that the isolation or quarantine of a person is not in compliance with the provisions of the Public Health Emergency Response Act, the court may fashion remedies appropriate to the circumstances of the public health emergency."

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Section 12. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

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"MEDICAL EXAMINATION AND TESTING.--

A. During a state of public health emergency, medical examinations or tests may be performed by a qualified person authorized by the secretary of health to provide medical examinations or tests.

B. The secretary of health may isolate or quarantine a person whose refusal of medical examination or testing results in uncertainty regarding whether the person has been exposed to or is infected with a threatening communicable disease or otherwise reasonably poses a danger to public health."

Section 13. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"VACCINATION AND TREATMENT.--

A. During a state of public health emergency, a qualified person authorized by the secretary of health may vaccinate persons to prevent infection by a threatening communicable disease and to protect against the spread of that disease.

B. To protect against the spread of a threatening communicable disease, the secretary of health may isolate or quarantine a person who is unable or unwilling for reasons of health, religion or conscience to undergo vaccination pursuant

to the standards and procedures set forth in the Public Health Emergency Response Act.

C. A qualified person authorized by the secretary of health may vaccinate a minor less than eighteen years of age, unless the minor or his duly authorized representative presents a certificate issued by a duly licensed physician that states that the minor's physical condition is such that the vaccination would seriously endanger his life or health.

D. During a state of public health emergency, in order to provide treatment to a person who is exposed to or infected with a threatening communicable disease:

- (1) treatment may be administered by a public health official;
- (2) treatment shall be approved pursuant to appropriate regulations promulgated by the federal food and drug administration; and
- (3) the secretary of health may isolate or quarantine a person who is unable or unwilling, for reasons of health, religion or conscience, to undergo treatment pursuant to the standards and procedures set forth in the Public Health Emergency Response Act."

Section 14. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"IMMUNITY.--During a state of public health emergency, the state, its political subdivisions, the governor, the secretary of health, the secretary of public safety, the director or any other state or local officials or personnel who assist during the public health emergency are liable for the death of a person, injury to a person or damage to property, only to the extent permitted in the Tort Claims Act, as a result of complying

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with the provisions of the Public Health Emergency Response Act or a rule adopted pursuant to that act."

Section 15. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"COMPENSATION.--

A. The state shall pay just compensation to the owner of health care supplies, a health facility or any other property that is lawfully taken or appropriated by the secretary of health, the secretary of public safety or the director for temporary or permanent use during a public health emergency. The amount of compensation due shall be calculated in the same manner as compensation due for taking of property pursuant to nonemergency eminent domain procedures, as provided by the Eminent Domain Code; provided that the amount of compensation calculated shall include lost revenues and expenses incurred due to the taking or appropriating of property, including a health facility.

B. The attorney general shall make a preliminary determination of whether or not compensation is due to an owner of health care supplies, a health facility or any other property. The owner may appeal the preliminary determination pursuant to rules promulgated by the attorney general. The rules shall include the owner's right to speak at the appeal and the owner's right to present facts pertinent to the appeal to a hearing officer appointed by the attorney general. A record shall be made of the hearing. The hearing officer shall preside over and take evidence at a hearing held pursuant to this section. The hearing officer shall prepare and submit to the attorney general a summary of the evidence taken at the hearing. The hearing officer shall also submit proposed findings of fact to the attorney general. The



attorney general shall render a decision that sets forth the amount of compensation, if any, due to the owner. The attorney general's decision shall include findings of fact and conclusions of law.

C. A decision made by the attorney general pursuant to this section shall be subject to an appeal to the district court, pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

D. To the extent practicable and consistent with protection of public health, the attorney general, prior to the taking or appropriating of property, shall institute civil proceedings against the property to be taken or appropriated in accordance with the Eminent Domain Code, other applicable laws, court rules or rules the courts may develop during a state of public health emergency."

Section 16. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"JOB PROTECTION FOR A PERSON WHO IS ISOLATED OR QUARANTINED.-- An employer or an agent of an employer shall not discharge from employment a person who is placed in isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act."

Section 17. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"RULEMAKING.--The secretary of public safety, the secretary of health and, where appropriate, other affected state agencies in consultation with the secretary of health and the secretary of public safety, shall promulgate and implement rules that are reasonable and necessary to implement and effectuate the Public Health Emergency Response Act."

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Section 18. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"MEMORANDUM OF UNDERSTANDING--INDIAN PUEBLOS OR TRIBAL ENTITIES.--The secretary of public safety, the secretary of health, the director and, when appropriate, other state agencies in consultation with the secretary of health and the secretary of public safety, may enter into a memorandum of understanding with an Indian pueblo or tribal entity within the state of New Mexico in order to effectuate the purposes, procedures and standards set forth in the Public Health Emergency Response Act."

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Section 19. A new section of Chapter 12, Article 10 NMSA 1978 is enacted to read:

"ENFORCEMENT--CIVIL PENALTIES.--

A. The secretary of health, the secretary of public safety or the director may enforce the provisions of the Public Health Emergency Response Act by imposing a civil administrative penalty of up to five thousand dollars (\$5,000) for each violation of that act. A civil administrative penalty may be imposed pursuant to a written order issued by the secretary of health, the secretary of public safety or the director after a hearing is held in accordance with the rules promulgated pursuant to the provisions of Section 16 of the Public Health Emergency Response Act.

B. The provisions of the Public Health Emergency Response Act shall not be construed to limit specific enforcement powers enumerated in that act.

C. The enforcement authority provided pursuant to the provisions of the Public Health Emergency Response Act is in addition to other remedies available against the same conduct under the common law or other statutes of this state."

Section 20. SEVERABILITY.--If any part or application of the Public Health Emergency Response Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 21. EMERGENCY.--It is necessary for the public peace, health and safety that ~~the~~ ~~act~~ take effect immediately.