Virtual Mentor. May 2004, Volume 6, Number 5.
doi: 10.1001/virtualmentor.2004.6.5.hlaw1-0405

Health Law

The Proposed Model State Emergency Health Powers Act

The Model State Emergency Health Powers Act proposes state legislation that should be enacted to ensure an adequate and coordinated response to public health emergencies.

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The Model State Emergency Health Powers Act (MSEHPA) proposes legislation for enactment by states to ensure adequate, coordinated response to public health emergencies—naturally occurring epidemics as well as deliberate acts of bioterrorism. The Model Act, as it is called for short, was drafted by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities at the request of the Centers for Disease Control and Prevention. Law professor Lawrence O. Gostin took the lead among 7 authors. The most recent draft of the act is dated December 21, 2001 [1]. Gostin et al explained the need for the act and summarized its provisions in the August 7, 2002 issue of *JAMA* [2]. The comments of 2 opponents to the act appeared in a later issue of *JAMA*, and others have appeared elsewhere [3-6].

Need for State Legislation

In the context of recent epidemic threats to public health—from SARS and avian flu to intentional releases of sarin gas and anthrax spores—Gostin et al assert that uniform emergency response legislation is needed in all 50 states. State rather than federal legislation, they say, because "federal law-making authority is constitutionally limited in scope" and "states have more flexibility in legislating to protect the public's health" [7]. But many state public health statutes are outdated, some so greatly that, if invoked, their constitutionality might be challenged. Beyond that, variations in existing state laws could hinder cooperation among states, should a multi-state response be required. Hence, the need for emergency health powers legislation at the state level.

The Proposed Model Act

The Model Act names 5 functions that the law is designed to facilitate under emergency conditions: (1) preparedness; (2) surveillance, ie, detecting a problem, identifying it as a health emergency, then tracking and measuring the episode or outbreak; (3) management of property, where "property" includes supplies of vaccines and pharmaceuticals as well as hospitals and other locales that might serve as public health treatment sites; (4) protection of persons, a function that may entail enforced testing, treatment, isolation and quarantine; and (5) communication, that is, keeping the public informed through widely accessible means, both in English and in the primary languages of any large numbers of residents who do not speak English.

Under the preparedness function, the Model Act directs each state governor to appoint a public health emergency planning commission that would then deliver an emergency response plan within 6 months. The plans must contain instructions for such steps as personnel training; identifying sites for isolation and quarantine as well for storage of supplies; plans for evacuation; vaccination of appropriate individuals; and plans for communication with the public during the emergency.

The provisions under the surveillance articles of the act direct all health professionals, including coroners, pharmacists, and testing laboratory staff, to report any illness or health conditions that may be potential causes of public health emergencies to a public health authority within 24 hours. In tracking the progress of the emergency, the public health authority is given power to compel affected persons to report, by name, those with whom they have come into contact. In this case, the power granted to the public health authority is backed by the power of the public safety authority, ie, state and local policing agencies.

After defining the circumstances under which governors should declare public health emergencies, the means for doing so, and the circumstances and means for terminating the declarations, the Model Act discusses the special powers the public health authority may exercise during the emergency. These include:

Evacuating and closing facilities;
Inspection of materials and, if necessary, their destruction;
Use of materials and supplies (eg, food, communication equipment, fuel) and facilities (eg, real estate);
Control of roads and public areas;
Disposal of infectious waste;
Disposal of human remains, taking possession of cemeteries, crematoria, and other disposal sites if necessary;
Procurement and rationing of health care supplies;
Medical examination, testing, vaccination, treatment, isolation, and quarantine of persons, under conditions that are not "reasonably likely to lead to serious harm to the affected individuals" [8];
Access to and disclosure of protected health information; and
Licensing, appointing, and prescribing duties of health personnel.

The failure of citizens to comply with health authority personnel as they carry out any of these functions constitutes a misdemeanor.

The state is exempt from liability for death, injury to persons, and damage to property as a result of actions taken in compliance with the act "except in cases of gross negligence or willful misconduct" [9]. Compensation will be made for property lawfully appropriated for use during the health emergency.

The act's detractors begin by challenging the assertion that state legislation is the best way to handle public health emergencies. Says George Annas,

"Public health policy should be national, and the addition of national security to federal financing and interstate commerce provides sufficient constitutional authority for Congress to enact legislation giving the federal government the leadership role in public health in the twenty-first century" [10].

According to the New York chapter of the American Civil Liberties Union, the events that would trigger the use of special powers under the Model Act are too broad. Moreover, requiring that names be used in reporting contacts violates privacy unnecessarily, and the enforced testing and treatment provisions override individuals' rights to refuse treatment. Finally, says the New York ACLU, judicial review procedures for the testing, treatment, isolation, and quarantine are inadequate [11].

Gostin and the Model Act's coauthors defend its inclusion of compulsory powers, arguing that the restraint of individual liberty in extreme situations is justified by the need to protect the common good, the welfare of the public. They point out that enforced conduct such as vaccination of school children and the wearing of seat belts in vehicles has long been part of public health law. And, they say, the Model Act's provisions afford greater safeguards against abuse of individual liberties than do most existing state infectious disease laws [12].

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12. Gostin, *JAMA*, 627.
