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HOUSE OF REPRESENTATIVES

141st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1 FOR

HOUSE BILL NO. 377

AS AMENDED BY

HOUSE AMENDMENT NOS. 2,3,4, 5 & 7

AND

SENATE AMENDMENT NOS. 1 & 2

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

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

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:

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

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

“(8) The powers and duties of the Department 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 3. Delete Title 16, Section 129 of the Delaware Code, and replace it with the following:

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

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

Section 4. Amend §3115(a), Title 20 of the Delaware Code by adding the following between the second and third sentences of subsection (a):

"No state of emergency can continue for more than 30 days without being renewed by the Governor."

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

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

- (a) Except as otherwise indicated in this Chapter or Title 20 of the Delaware Code, the Secretary of Health and Social Services or his/her designee shall be responsible for implementing all measures designed to address potential contagious diseases or infectious diseases in this State.
- (b) A health care provider shall report all cases of persons who harbor any illness or health condition that may be potential causes of a public health emergency. Reportable illnesses and health conditions include, but 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 subsections (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 a vocation that primarily involves 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 in a building or facility 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(b) of this Title.”.

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

“(c) 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 shall 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 perform the following:

- (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 may close, evacuate, or decontaminate any facility or decontaminate or destroy any material when the Division reasonably believes that it is more likely than not that such facility or material may seriously endanger the public health. However, to the extent practicable and consistent with the protection of public health, prior to the destruction of any material pursuant to this subsection, 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 rules that may be developed by the Superior Court. Additionally, a person whose property is destroyed pursuant to this subsection is entitled to seek compensation pursuant to the procedures and restrictions of 20 Del. C. §3148.
- (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) 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 III 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 in accord with the uses described in §1231 of this subchapter; 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 subchapter shall disclose the information to another person except as authorized by this Subchapter. This Section shall not apply to:
- (a) the individual who is the subject of the information;
  - (b) the individual's parents, legal guardians, or other persons lawfully authorized to make health care decisions for the individual where the individual who is the subject of the information is unable to give legal consent pursuant to subsection (6) of this section; or
  - (c) any person who is specifically required by federal or State law to disclose the information.”.

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

“Subchapter V. Public Health Emergencies.

§ 3131. Findings.

The State of Delaware finds as follows:

- (a) Government must do more to protect the health, safety, and general well being of the general public.
- (b) New and emerging dangers, including emergent and resurgent infectious diseases and incidents of civilian mass casualties, pose serious and immediate threats.
- (c) A renewed focus on the prevention, detection, management, and containment of public health emergencies is called for.
- (d) Emergency health threats, including those caused by bioterrorism and epidemics, require the exercise of extraordinary government functions.
- (e) Delaware must have the ability to respond, rapidly and effectively, to potential or actual public health emergencies.
- (f) The exercise of emergency health powers must promote the common good.
- (g) Emergency health powers must be grounded in a thorough scientific understanding of public health threats and disease transmission.
- (h) The rights of people to liberty, bodily integrity, and privacy must be respected to the fullest extent possible consistent with the overriding importance of the public's health and security.

- (i) Guided by principles of justice, it is the duty of this State to act with fairness and tolerance towards individuals and groups.
- (j) This subchapter is necessary to protect the health and safety of the citizens of this State.

§ 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.
- (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.

#### § 3134. Control of Health Care Supplies.

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

#### § 3135. Destruction of Property.

To the extent practicable and consistent with the protection of public health, prior to the destruction of any property under this Subchapter, the public safety authority or public health authority shall institute appropriate civil proceedings against the property 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 for use during a state of emergency. Any property acquired by the public safety authority or public health authority through such proceedings shall, after entry of the decree, be disposed of by destruction as the Court may direct.

are subject to proper control and treatment.

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

During a State of Emergency, the following rules shall apply:

- (a) Medical examinations or tests may be performed by any qualified person authorized to do so by the public safety authority.
- (b) Medical examinations or tests must not be such as are reasonably likely to lead to serious injury to the affected individual.
- (c) The public safety authority may isolate or quarantine, subject to Section 3138, any person whose refusal of medical examination or testing results in uncertainty regarding whether he or she has been exposed to or is infected with a contagious or possibly contagious disease or otherwise poses a danger to public health.

§ 3138. Isolation and Quarantine During Public Health Emergency.

The following isolation and quarantine procedures shall be in effect during a state of emergency:

- (a) General Authority. The public safety authority may exercise, for such period as the State of emergency exists, the following emergency powers over persons:
  - (1) to establish and maintain places of isolation and quarantine;
  - (2) to isolate and quarantine individuals subject to the procedures enumerated in this Section;and
  - (3) to require isolation or quarantine of any person by the least restrictive means necessary to protect the public health, subject to the other provisions of this Section. All reasonable means shall be taken to prevent the transmission of infection among the isolated or quarantined individuals.
- (b) Standard for Quarantine or Isolation.
  - (1) Persons shall be isolated or quarantined if it is determined by clear and convincing evidence that the person to be isolated or quarantined poses a significant risk of transmitting a disease

to others with serious consequences. A person's refusal to accept medical examination, vaccination, or treatment pursuant to Sections 3137 and 3139 of this Title shall constitute *prima facie* evidence that said person should be quarantined or isolated.

- (2) Isolation or quarantine of any person shall be terminated when such person no longer poses a significant risk of transmitting a disease to others with serious consequences.
- (c) Character of Isolation and Quarantine Area.
- (1) To the extent possible, the premises in which persons are isolated or quarantined shall be maintained in safe and hygienic manners, designed to minimize the likelihood of further transmission of infection or other harm to persons subject to isolation or quarantine. Adequate food, clothing, medication, and other necessities, and competent medical care shall be provided.
  - (2) Isolated individuals must be confined separately from quarantined individuals.
  - (3) The health status of isolated and quarantined individuals must be monitored regularly to determine if their status should change. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease, he or she must promptly be moved to isolation.
- (d) Control of Quarantine and Isolation Area.
- (1) A person subject to isolation or quarantine shall obey the public safety authority's rules and orders, shall not go beyond the isolation or quarantine premises, and shall not put himself or herself in contact with any person not subject to isolation or quarantine other than a physician or other health care provider, public health authority, or person authorized to enter isolation or quarantine premises by the public safety authority. Any person entering isolation or quarantine premises may be isolated or quarantined.
  - (2) No person, other than a person authorized by the public safety authority, shall enter isolation or quarantine premises. If, by reason of an unauthorized entry into an isolation or quarantine premises, the person poses a danger to public health, he or she may be subject to isolation or quarantine pursuant to the provisions of this Section.

- (e) Procedures for Isolation and Quarantine. The following procedures shall protect the due process rights of individuals:
- (1) The public safety authority shall petition the Superior Court for an order authorizing the isolation or quarantine of an individual or groups of individuals.
  - (2) A petition pursuant to subsection (e)(1) shall specify the following:
    - (aa) the identity of the individual(s) or groups of individuals subject to isolation or quarantine;
    - (bb) the premises subject to isolation or quarantine;
    - (cc) the date and time at which the public safety authority request isolation or quarantine to commence;
    - (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.
    - (gg) A statement of what effort, if any, has been made to give notice of the hearing to the individual or group of individuals to be isolated or quarantined, or the reason supporting the claim that notice should not be required.
  - (3) *Ex parte* orders. Before isolating or quarantining a person, the public safety authority shall obtain a written order, which may be an *ex parte* order, from the Superior Court authorizing such action. An order, which may be 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 an order, which may be an *ex parte* order, upon finding by clear and convincing evidence that isolation or quarantine is warranted pursuant to the provisions of this subchapter. A copy of the authorizing order shall be given to the person ordered to be isolated or quarantined, along with notification that the person has a right to a hearing under paragraph (5) of this subsection.
  - (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 order, which may be an *ex parte* order, from the Court if a physician determines that any delay in the isolation or quarantine of the person would pose an immediate and severe danger 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. In addition, if the public safety authority exercises its powers under this subsection, it must provide a written directive to the individuals or groups under temporary quarantine or isolation 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;
  - (ii) there are questions of law or fact common to the individual claims or rights to be determined;
  - (iii) the group claims or rights to be determined are typical of the affected individuals' claims or rights; and
  - (iv) the entire group will be adequately represented in the consolidation, giving due regard to the rights of affected individuals.
- (f) Relief for Isolated and Quarantined Persons.
  - (1) On or after 10 days following a hearing as is provided for in paragraph (5) of subsection (e) of this section, a person isolated or quarantined pursuant to the provisions of this Section may request in writing a Court hearing to contest his or her continued isolation or quarantine. The hearing shall be held within seventy-two hours of receipt of such request, excluding

Saturdays, Sundays and legal holidays. A request for a hearing shall not alter the order of isolation or quarantine. At the hearing, the public safety authority must show by clear and convincing evidence that continuation of the isolation or quarantine is warranted because the person poses a significant risk of transmitting a disease to others with serious consequences.

- (2) A person isolated or quarantined pursuant to the provisions of this Section may request a hearing in the Superior Court for remedies regarding his or her treatment and the terms and conditions of such quarantine or isolation. Upon receiving a request for either type of hearing described in this subparagraph, the Court shall fix a date for a hearing. The hearing shall take place within ten days of the receipt of the request by the Court. The request for a hearing shall not alter the order of isolation or quarantine.
- (3) If, upon a hearing, the Court finds that the isolation or quarantine of the individual is not warranted under the provisions of this Section, then the person shall be immediately released from isolation or quarantine. If the Court finds that the isolation or quarantine of the individual is not in compliance with the provisions of subsection (c) of this section, the Court may then fashion remedies appropriate to the circumstances of the state of public health emergency and in keeping with the provisions of this section.
- (4) No person shall be permanently terminated from employment by a Delaware employer as a result of being isolated or quarantined pursuant to this Section. However, this paragraph shall not apply to a person who has been quarantined as a result of refusing to comply with an examination, treatment, or vaccination program, nor shall it apply to a person whose conduct caused the state of emergency that necessitated the isolation or quarantine.

(g) Additional Due Process Protections.

- (1) A record of proceedings before the Court shall be made and retained for at least 3 years.
- (2) The petitioner shall have the right to be represented by counsel or other lawful representative, and the State shall provide counsel to indigent persons against whom proceedings are initiated pursuant to this subchapter.
- (3) The manner in which the request for a hearing is filed and acted upon will be in accordance with the existing laws and rules of the Superior Court or any such rules that are developed by

the Courts for use during a state of emergency, provided that hearings should be held by any means that will allow all necessary persons to participate in the event that a public health emergency makes personal appearances impractical.

§ 3139. Vaccination and Treatment During Public Health Emergency.

During a State of Emergency, the public safety authority may exercise, for such period as the state of emergency exists, the following emergency powers:

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

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

During a State of Emergency, the public health authority may, for such period as the state of emergency exists, collect specimens and perform tests on any person or animal, living or deceased, and acquire any previously collected specimens or test results that are reasonable and necessary for emergency response.

- (a) All specimens shall be clearly marked.
- (b) Specimen collection, handling, storage, and transport to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration and provide for the safe collection, storage, handling, and transport of such specimen.
- (c) Any person authorized to collect specimens or perform tests shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of specimens to be tested. This requirement applies to all specimens, including specimens collected using on-site testing kits.
- (d) Recognizing that, during a state of public health emergency, any specimen collected or test performed may be evidence in a criminal investigation, any business, facility, or agency authorized to collect specimens or perform tests shall provide such support as is reasonable and necessary to aid in a relevant criminal investigation.
- (e) To prevent the spread of contagious or possibly contagious disease, the public health authority may isolate or quarantine, subject to §3138 of this subchapter, persons who are unable or unwilling for reasons of health, religion, or conscience to undergo specimen collection or testing pursuant to this section.

§ 3141. Confidentiality of Medical Information.

Protected health information gathered during a emergency shall be subject to the provisions of Title 16, Chapter 12, Subchapter III of the Delaware Code.

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

During a State of Emergency, the public health authority may exercise, for such period as the state of emergency exists, the following emergency powers regarding licensing of health personnel:

- (a) To require in-state health care providers to assist in the performance of vaccination, treatment, examination, or testing of any individual;

- (b) To appoint and prescribe the duties of such out-of-state emergency health care providers as may be reasonable and necessary for emergency response.
- (1) The appointment of out-of-state emergency health care providers pursuant to this Section may be for a limited or unlimited time, but shall not exceed the termination of the state of emergency. The public health authority may terminate the out-of-state appointments at any time or for any reason provided that any such termination will not jeopardize the health, safety, and welfare of the people of this State.
  - (2) The public health authority may waive any or all licensing requirements, permits, or fees required by the State code and applicable orders, rules, or regulations for health care providers from other jurisdictions to practice in this State, so long as health care providers from other jurisdictions possess the licensing, permit, or fee requirement for health care providers in their jurisdictions.
  - (3) Any out-of-state emergency health care provider appointed pursuant to this Section shall be considered a public employee under 10 Del. C. §§ 4001-4002;
- (c) To authorize the medical examiner to appoint and prescribe the duties of such emergency assistant medical examiners as may be required for the proper performance of the duties of the office.
- (1) The appointment of emergency assistant medical examiners pursuant to this Section may be for a limited or unlimited time, but shall not exceed the termination of the state of emergency.
  - (2) The medical examiner may waive any or all licensing requirements, permits, or fees required by the State code and applicable orders, rules, or regulations for the performance of these duties, so long as the appointed emergency assistant medical examiner is competent to properly perform the duties of the office. In addition, if from another jurisdiction, he or she must possess the licensing, permit, or fee requirement for medical examiners or assistant medical examiners in that jurisdiction.
  - (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, or a member's designee:

- (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;
- (k) the Governor's Homeland Security Advisor;
- (l) a representative of the Delaware medical community;
- (m) the Attorney General;
- (n) a physician who is board certified in emergency medicine and licensed to practice in this State.

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 subchapter, including a plan that ensures that 90% of the population is covered by a Health Alert Network;
- (2) Centralized coordination of resources, manpower, and services, including coordination of responses by State, local, and federal agencies;
- (3) The location, procurement, storage, transportation, maintenance, and distribution of essential materials, including medical supplies, drugs, vaccines, food, shelter, and beds, including a plan (with identified personnel to be trained) to receive and distribute critical stockpile items and manage a mass distribution of vaccine and/or antibiotics on a twenty-four hours a day, seven days a week basis;
- (4) The continued, effective operation of the judicial system including, if deemed necessary, the identification and training of personnel to serve as emergency judges regarding matters of isolation and quarantine as described in this subchapter;
- (5) The method of evacuating populations, and housing and feeding the evacuated populations;
- (6) The identification and training of health care providers to diagnose and treat persons with infectious diseases, including a review of statutes, regulations, and ordinances that provide for credentialing, licensure, and delegation of authority for executing emergency public health measures;
- (7) Guidelines for the vaccination of persons, in compliance with the provisions of this subchapter;
- (8) Guidelines for the treatment of persons who have been exposed to or who are infected with diseases or health conditions caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins, that pose a substantial risk of a significant number of fatalities or incidents of permanent or long-term disability. The guidelines should cover, but not be limited to, the following diseases: anthrax, botulism, smallpox, plague, tularemia, and viral hemorrhagic fevers;

- (9) Guidelines for the safe disposal of human remains, in compliance with the provisions of this subchapter;
- (10) Guidelines for the safe disposal of infectious waste, in compliance with the provisions of this subchapter;
- (11) Guidelines for the safe and effective management of persons isolated, quarantined, vaccinated, or treated during a state of public health emergency;
- (12) Tracking the source and outcomes of infected persons, including a plan to receive and evaluate urgent disease reports from all parts of the State on a twenty-four hour a day, seven days a week basis;
- (13) Ensuring that each county and city within the State identifies the following:
  - (i) sites where persons can be isolated or quarantined, with such sites complying with the provisions of this subchapter regarding the least restrictive means for isolation and quarantine, and the requirements for the safety, health and maintenance of personal dignity of those isolated or quarantined;
  - (ii) sites where medical supplies, food, and other essentials can be distributed to the population;
  - (iii) sites where emergency workers can be housed and fed;
  - (iv) routes and means of transportation of people and materials;
- (14) Coordination with other states and the federal government;
- (15) Taking into account cultural norms, values, and traditions that may be relevant;
- (16) Distribution of this plan and guidelines to those who will be responsible for implementing the plan;
- (17) Development of a plan to improve working relationships and communications between Level A (clinical) and Level B/C laboratories (i.e. Laboratory Response Network laboratories) as well as other public health officials;
- (18) Development of a plan for communication systems that provide for a 24 hour a day, seven day a week flow of critical health information between hospital emergency departments, State and local health officials, and law enforcement;

- (19) Development of a plan to enhance risk communication and information dissemination to educate the public regarding exposure risks and effective public response;
  - (20) Locating and procuring all funds, if any, that are available to the State from every federal agency to assist the State in its preparation for a public health emergency; and
  - (21) Other measures necessary to carry out the purposes of this subchapter.
- (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 must receive appropriate and timely training, and the Commission's plan must 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. However, rules and regulations promulgated and implemented under this subchapter and enforcement of the provisions of this subchapter must be in accord with the due process rights guaranteed by the 1897 Constitution of the State of Delaware, as amended, and the Constitution of the United States of America.

§ 3147. Liability.

- (a) During a State of 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) During a State of 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.
- (c) 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 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 be believed that they may endanger the public health . Except as otherwise indicated in this subchapter, '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 been taken or appropriated, in accordance with existing Superior Court rules, or any such rules that may be developed by the Courts for use during a state of emergency.
- (c) The amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to non-emergency eminent domain procedures, except that the amount of compensation calculated for confiscated supplies or materials shall not exceed the costs incurred to produce the items.

§ 3149. Saving clause.

This Subchapter does not explicitly preempt other State laws or regulations that preserve to a greater degree the powers of the Governor or public health authority, provided such laws or regulations are consistent,

and do not otherwise restrict or interfere, with the operation or enforcement of the provisions of this Subchapter. The powers assigned to the Governor, public safety authority, and public health authority by this Subchapter supplement and do not derogate the Governor's powers under Subchapters III and IV of this Title.

§ 3150. Conflicting laws.

- (a) This Act does not restrict any person from complying with federal law or regulations.
- (b) In the event of a conflict between this Act and other State or local laws or regulations concerning public health powers, the provisions of this Act apply.”.

Section 14. Severability.

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

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