

Section 1: Command and Control

- I. Overview**
- II. Objectives**
- III. Command Structure and Process**
- IV. Interagency Taskforce on Influenza Preparedness**
- V. Legal Authorities**
- VI. Activities by WHO Pandemic Period and CDC Pandemic Interval**

Appendices:

- 1-A: New York State Department of Health Incident Management System
- 1-B: Quarantine Powers of Local Health Officers and Local Boards of Health
- 1-C: Child Day Care Closures During an Emergency
- 1-D: School Closures During an Emergency
- 1-E: College and University Closures During an Emergency
- 1-F: Business Closures During an Emergency
- 1-G: Suspension of Public Meetings During an Emergency
- 1-H: A Guide to New York State Laws Governing Public Health Emergency Preparedness and Response
- 1-I: Summary of Public Officers Law Coverage Regarding Volunteers
- 1-J: Use of Unlicensed Volunteers to Administer Influenza Vaccine
- 1-K: Proposed/Requested Waivers of State Laws and Regulations

I. Overview

This section describes the New York State Department of Health's (NYSDOH) pandemic influenza command and control structure and process. Because the response to pandemic influenza will use the same command and control system developed for other public health emergencies, this section highlights activities specific to pandemic influenza.

II. Objectives

To describe:

- The command structure and decision making process.
- The process for establishing the Interagency Taskforce on Influenza Preparedness.
- The legal issues associated with a pandemic outbreak.
- Roles and responsibilities by WHO pandemic period and CDC pandemic interval.

III. Command Structure and Process

During emergencies, NYSDOH coordinates response activities by using an incident management system, superimposed over the normal programmatic chain of command (see Appendix 1-A: NYSDOH Public Health and Health Care Incident Management System). In emergencies, the NYSDOH's Office of Health Emergency Preparedness manages the traditional functions of incident command (Command, Planning, Operations, Logistics, Finance and Administration) within NYSDOH's existing systems to facilitate an integrated and comprehensive response. Several staff may be identified for each incident command role to accommodate the length of the pandemic period.

IV. Interagency Taskforce on Influenza Preparedness

Before a pandemic occurs, an Interagency Taskforce on Influenza Preparedness has been formed by the New York State Disaster Preparedness Commission. The Taskforce will delineate agency roles and responsibilities to implement the State's Pandemic Influenza Plan and ensure each agency has a plan for continuity of operations during a pandemic.

When a pandemic occurs, the Governor may activate the Taskforce after consultations with NYSDOH and agency representatives of the Disaster Preparedness Commission. If a decision is made to activate, the State Emergency Management Office (SEMO) will coordinate the taskforce with NYSDOH as the lead agency.

V. Legal Authorities

When a novel influenza virus or pandemic occurs, there are several steps that may be taken by the State to prevent or stem the spread of illness.

- The Commissioner, pursuant to 10 NYCRR § 2.1, may designate influenza (both cases and suspected cases) as a communicable disease because it is a significant threat to public health. Currently, *laboratory-confirmed* influenza is designated as a communicable disease. (*Investigation interval*)
- Once the Commissioner designates influenza as a communicable disease, the local health officers may exercise their authority under Public Health Law Article (PHL) 21 and 10 NYCRR Part 2 to isolate and/or quarantine individuals to prevent further spread of the virus (see Appendix 1-B: Quarantine Powers of Local Health Officers and Local Boards of Health). (*Investigation interval*)
- In the event that health care facilities exceed their capacity, local boards of health and health officers may establish temporary facilities to care for large numbers of individuals who are ill (see PHL Section 2100). The State Public Health Council may establish hospitals for communicable diseases and may establish standards for both types of facilities (see PHL Article 28 and Section 2109). If a state disaster emergency is declared, the Governor can suspend statutory and regulatory requirements to permit the establishment of necessary facilities (see Executive Law Section 29-a). (*Acceleration interval*)
- Closing child day cares, schools and businesses, and canceling public gatherings may be effective in slowing the spread of influenza (see Appendix 1-C: Child Day Care Closures During an Emergency; Appendix 1-D: School Closures During an Emergency, Appendix 1-E: College and University Closures During an Emergency; Appendix 1-F: Business Closure During an Emergency; Appendix 1-G: Suspension of Public Meetings During an Emergency).
- Vaccination may be the most effective means to protect the population. Public Health Law § 613(1) obligates the Commissioner to “develop and supervise the execution of a program of immunization, surveillance and testing to raise . . . the immunity of the children . . . and . . . adults in the state against diseases identified by the Commissioner, including . . . influenza” and to “encourage the municipalities in the state to develop and . . . assist them in the development and the execution of local programs of inoculation to raise the immunity of the children and adults of each municipality to the highest reasonable level.” Public Health Law § 206(1)(1), authorizes the Commissioner to “[e]stablish and operate such adult and child immunization programs as are necessary to prevent or minimize the spread of disease and to protect the public health.” In rare circumstances, mandatory vaccination may be the most effective means to protect the population. Mandatory immunization can only be authorized by the Governor pursuant to the authority given to him in Executive Law §

29-a (see Appendix 1-H: A Guide to New York State Laws Governing Public Health Emergency Preparedness and Response). (*Recognition, Initiation, Acceleration intervals*)

- Mass vaccination efforts will most likely require use of volunteer staff who can be expected to inquire into the liability and/or workers compensation coverage that will be available to them if they participate (see Appendix 1-I: Summary of Public Officers Law Coverage Regarding Volunteers). **Use of trained but unlicensed personnel may also be needed to accomplish a mass vaccination in a timely fashion** (see Appendix 1-J: Use of Unlicensed Volunteers to Administer Influenza Vaccine). (*Initiation, Acceleration intervals*)
- Mass vaccination efforts may require changes in scope of practice for nurses and/or pharmacists and/or other licensed health care providers and waivers of medical, nursing and pharmacy practice requirements to allow efficient delivery of medications through Points of Dispensing (see Appendix 1-K: Proposed/Requested Waivers of State Laws and Regulations). (*Initiation, Acceleration intervals*)

VI. Activities by WHO Pandemic Period and CDC Pandemic Interval

Interpandemic Period

State Health Department:

- Activate the Interagency Taskforce on Influenza Preparedness (*Investigation, Recognition*)

State and Local Health Departments:

- Ensure that pandemic plans are developed, either as an annex or supplement to the existing All Hazard Emergency Operations Plans, or as stand-alone plans. (*Investigation, Recognition*)
- Identify, address and resolve crucial gaps in infrastructure and resources, laws and/or statutes which may interfere with an effective response. (*Investigation, Recognition*)
- Identify partner organizations that must have access to the NYSDOH Health Commerce System and initiate outreach for all organizations to gain access and accounts for all key staff members. (*Investigation, Recognition*)
- Develop and maintain lists, including contact information, of partners, resources, and facilities using the NYSDOH communication directory. (*Investigation, Recognition*)
- Establish and maintain relationships with, and contact information for, key communications partners; facilitate risk communication training for the same. (*Investigation, Recognition*)
- Coordinate planning activities with bordering jurisdictions and unique populations as appropriate. This may include bordering counties, states, Native American nations, new immigrant populations, and certain religious enclaves and other

countries (such as Canada and Mexico) to support optimal planning and response efforts. (*Investigation, Recognition*)

- Review, exercise, and modify the plan on a periodic basis. (*Investigation, Recognition*)

Pandemic Alert Period

State Health Department:

- Activate the Interagency Taskforce on Influenza Preparedness and meet with state agency partners to review and modify plan as necessary. (*Investigation, Recognition*)
- Activate enhanced surveillance and communications plans. (*Investigation, Recognition*)

State and Local Health Departments:

- Meet with appropriate partners and stakeholders and review major elements of the plan and evaluate level of preparedness. (*Investigation, Recognition*)
- Modify the plan as needed. (*Investigation, Recognition*)
- Use NYSDOH Health Commerce System for critical communications and notifications with key partners. (*Investigation, Recognition*)
- Coordinate with other counties, states, federal agencies and bordering jurisdictions as appropriate. (*Investigation, Recognition*)
- Confirm availability of facilities for mass vaccination, mass casualty, etc. (*Recognition*)
- Implement social marketing techniques to normalize influenza risk reduction behaviors and provide information to familiarize target audiences with the issue of pandemic flu. (*Investigation, Recognition*)
- Document expenses of pandemic response. (*Recognition – Affected State*)
- Notify key officials of need for additional resources, if necessary. (*Recognition – Affected State*)

Pandemic Period

State Health Department:

- Activate the Interagency Taskforce on Influenza Preparedness, and meet with partners and stakeholders to fully activate plan. (*Initiation*)
- Interface with appropriate counterparts at the national level. (*Initiation, Acceleration, Peak, Deceleration, Resolution*)
- Participate in HHS/CDC public information briefings. (*Initiation, Acceleration, Peak, Deceleration, Resolution*)
- Establish a joint information center (JIC), or schedule daily media briefings to update information and discuss response activities. (*Initiation, Acceleration, Peak, Deceleration, Resolution*)

State and Local Health Departments:

- Use NYSDOH Health Commerce System for critical communications and notifications. (*Affected State - Initiation, Acceleration, Peak, Deceleration, Resolution*)
- Monitor staffing needs. (*Affected State - Initiation, Acceleration, Peak, Deceleration, Resolution*)
- Coordinate activities with neighboring jurisdictions, as appropriate. (*Affected State - Initiation, Acceleration, Peak, Deceleration, Resolution*)
- Activate call centers and implement targeted strategies to reach all audiences, including utilizing the Emergency Alert System (EAS), if necessary. (*Affected State - Initiation, Acceleration, Peak, Deceleration, Resolution*)
- Document expenses of pandemic response. (*Affected State - Initiation, Acceleration, Peak, Deceleration, Resolution*)

Local Health Departments:

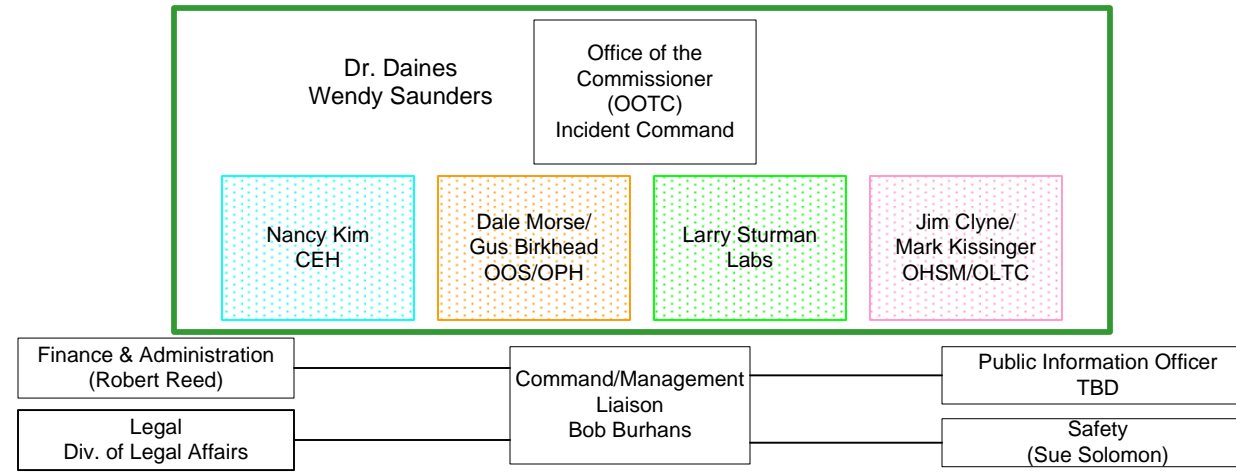
- Schedule internal, partner, and media briefings as necessary to update information and discuss response activities. (*Affected State - Initiation, Acceleration, Peak, Deceleration, Resolution*)

Incident Command System (ICS) Roles

Incident Management System (IMS) Functions

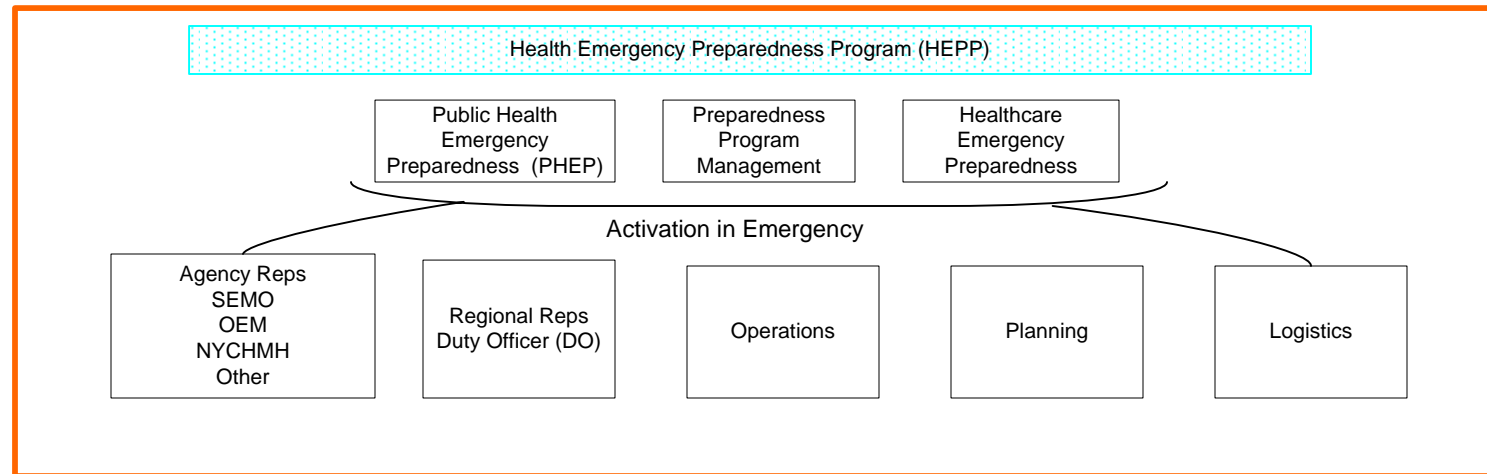
Command

Executive Level



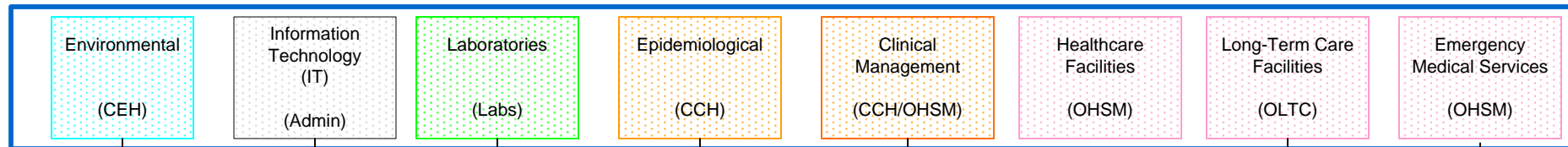
Sections (Chiefs)

ICS Management Teams



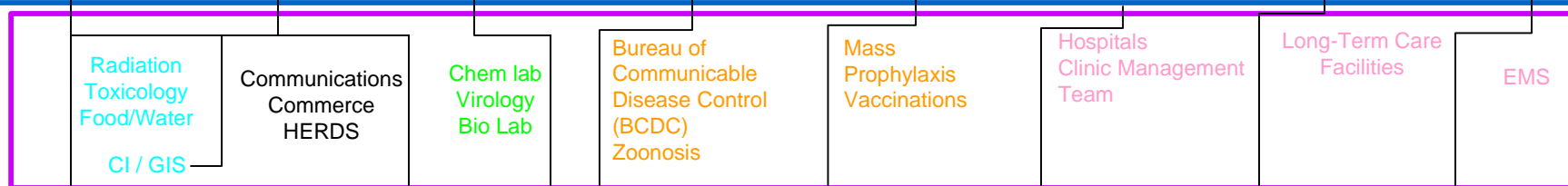
Groups (Leaders/Alts/Assts)

HOC Groups Technical Expertise



Branches (Managers)

DOH Staff



Additional branches


**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

September 2, 2003

Michael Caldwell, M.D., M.P.H.
President
New York State Association of County Health Officials
Dutchess County Dept. of Health
387 Main Street
Poughkeepsie, New York 12601

Re: DOH GC Opinion No.03-03
 Quarantine Powers of Local Health
 Officers and Local Boards of Health

Dear Dr. Caldwell:

Dennis Whalen, Executive Deputy Commissioner, has asked that I respond to Dr. Lloyd Novick's May 9, 2003 letter, seeking clarification of the authority of local health officials, particularly with regard to the power to isolate and quarantine individuals exposed to or infected with a communicable disease. As indicated below, both local health officers and local boards of health have the power to isolate and quarantine individuals exposed to or infected with a communicable disease designated in the State Sanitary Code. There is considerable variation among counties regarding who exercises the powers of local health officers and local boards of health. Therefore, the general guidance provided in this letter should be supplemented by specific advice from each county's legal advisor.

Brief Summary

A "local health officer" includes a county health commissioner; the health commissioner of a city having a population of 50,000 or more; a public health director; a county health director in counties or cities having populations of less than 150,000 according to the 1970 or subsequent federal census, but without a charter or optional or alternative form of government; and the officer of a city having a population of less than 50,000, town, village, or part-county or consolidated health district who administers and manages public health programs within such jurisdiction. Each can exercise the powers of a local health officer.

A "local board of health" is the board of health of a county, part-county, city, village, town or consolidated health district. In some situations a county legislature may serve as the board of health. In villages the board of health is the board of trustees of the village; in towns the board of health is the town board. Since the Public Health Law provides for either the abolition of certain local health districts or their continuation as a subdivision of the county, or part-county, health district, the activity and authority of town and village boards of health will vary based upon local actions taken. In addition, under Article 9 of the State Constitution and the Municipal Home Rule Law, county charters can reallocate the administrative responsibilities of the agencies of local government among the agencies. As a result, a county charter may give to other county agencies or bodies the powers which the Public Health Law gives to a board of health. Given the variety of local actions that several counties may have undertaken, local health officers should consult with their own legal advisors to confirm what bodies exercise the powers of the local board of health in their jurisdictions. The Department has no central registry of such information.

The Public Health Law requires every local board of health and every local health officer to guard against the introduction of communicable diseases designated in the State Sanitary Code by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases. The law authorizes local boards of health and local health officers to provide for the care and isolation of cases of communicable disease in a hospital or elsewhere when necessary for protection of the public health and, subject to the provisions of the State Sanitary Code, to prohibit and prevent all contact and communication with or use of infected premises, places and things, and to require, and if necessary, provide the means for their thorough cleansing before general contact and use is resumed. The law requires health officers to investigate the circumstances and to seek a court order committing non-compliant individuals afflicted with a communicable disease to a hospital or institution established for the care of persons suffering from such communicable disease. Pursuant to these provisions both local health officers and local boards of health have the power and primary responsibility to isolate and quarantine individuals exposed to or infected with a communicable disease designated in the State Sanitary Code.

Discussion

The term “local health officer” is defined in Public Health Law (“PHL”) § 2(j) as the “health officer of a county, part-county, city, village, town, or consolidated health district.” A county commissioner of health has all the powers and duties of a local health officer. See PHL § 352(2). In “unorganized” counties having a population of less than 150,000 according to the 1970 or subsequent federal census, but no charter or optional or alternative form of government, the county legislature may appoint a county health director “who shall have all the powers prescribed in section three hundred fifty-two of [the PHL]” See PHL § 356.) In counties of less than 250,000 population, a public health director acting with appropriate medical consultation may be employed in lieu of a commissioner of health to administer and manage public health functions in a county. See 10 NYCRR §§ 11.180 through 11.182. The terms “health officer” or “local health officer” are defined in 10 NYCRR § 1.1(d) to mean and include “the health officer, or other officer of a municipality, by whatever title he [sic] may be known, having the usual powers and duties of a health officer of a municipality.” The term “local health officer” is more clearly defined in 10 NYCRR § 11.1 to mean (1) the commissioner of health of a county or a city having a population of 50,000 or more and having an established health department; (2) a public health director; (3) a county health director appointed pursuant to PHL § 356 in “unorganized” counties having a population of less than 150,000 according to the 1970 or subsequent federal census, but no charter or optional or alternative form of government; and (4) the officer of a city having a population of less than 50,000, town, village or consolidated health district who administers and manages public health programs within such jurisdiction and who has the general powers and duties specified in the PHL. Each can exercise the powers of a local health officer.

As to local boards of health, as a general proposition, the boards of health of all county and part-county health districts have the same powers and duties. The board of health in a county or part-county health district created under PHL § 340 has the powers set forth in PHL § 347, et seq., including the powers and duties of a local board of health. See PHL § 308. PHL § 356 designates the legislatures of certain small counties (“unorganized” counties having a population of less than 150,000 according to the 1970 or subsequent federal census, but no charter or optional or alternative form of government) as the local board of health and provides that they, too, “shall have all the powers and duties of a board of health of a county or part-county health district.”

A differentiation among powers exercised by county boards of health arises when they respond to local conditions, such as the availability of resources or enactment of charters. PHL § 602(6) permits the State Commissioner of Health to approve a public health services plan in which the county provides reduced services, as long as the services the county does not provide can be provided by the State or through contract. This can result in “partial service” health departments in which state district offices provide some services within a county. Similarly, PHL § 341 provides for either the abolition of certain local health districts or their continuation within a county or part-county health district as a subdivision of the county or part-county health district. Thus, in one county the town

and village boards of health may be active participants in public health while a different county or part-county health district may be more centralized. In villages the board of health is the board of trustees of the village; in towns the board of health is the town board. See PHL § 302. PHL § 356 does not address the relationship between a county board of health created under its terms and pre-existing town and village boards of health. Therefore, such pre-existing town and village boards of health might have greater autonomy in county and part-county health districts governed by PHL § 356 than they would in county and part-county health districts formed under PHL § 340.

In addition, under Article 9 of the State Constitution and the Municipal Home Rule Law, county charters can reallocate the administrative responsibilities of local government agencies. As a result, a charter may give the county legislature or some other local agency powers which the PHL gives to a board of health. The scope and exercise of that power would, of course, be subject to any provisions of the PHL or State Sanitary Code. The Department does not maintain a summary of county charter provisions. Given the variety of possible local actions that several counties may have undertaken, the county commissioners and public health directors should consult with their own legal advisors to confirm what bodies exercise the powers of the local board of health. The Department has no central registry of such information.

With regard to the power to isolate and quarantine, PHL § 2100 states:

1. Every local board of health and every health officer shall guard against the introduction of such communicable diseases as are designated in the sanitary code, by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases.

2. Every local board of health and every health officer may:

(a) provide for care and isolation of cases of communicable disease in a hospital or elsewhere when necessary for protection of the public health and,

(b) subject to the provisions of the sanitary code, prohibit and prevent all intercourse and communication with or use of infected premises, places and things, and require, and if necessary, provide the means for the thorough purification and cleansing of the same before general intercourse with the same or use thereof shall be allowed.

In addition, PHL § 2120 requires health officers, upon receipt of a complaint from a physician that a person is afflicted with a communicable disease and is unable or unwilling to conduct himself and to live in such a manner as not to expose members of his family or household or other persons with whom he may be associated to danger of infection, to investigate the circumstances and to seek a court order committing the individual to a hospital or institution established for the care of persons suffering from such communicable disease. Pursuant to these provisions both local health officers and local boards of health have the power to isolate and quarantine individuals exposed to or infected with a communicable disease designated in the State Sanitary Code. The State Sanitary Code places the primary responsibility for such isolation and quarantine on local health officers, see 10 NYCRR §§ 2.6, 2.25(d), (e) and (f), and 2.29.

I also want to take this opportunity to confirm the New York State Department of Health's position that local health officers and local boards of health may quarantine and isolate only patients infected with or exposed to

Appendix 1-B

communicable diseases determined to be dangerous to the public health by the New York State Public Health Council and listed in 10 NYCRR § 2.1. We understand that local health officers are concerned that they be able to respond quickly to communicable disease threats in their communities. By authorizing the State Commissioner of Health to add diseases to the communicable disease list in 10 NYCRR § 2.1 between its meetings, the Public Health Council has assured that expeditious response will be possible. The Department looks forward to continuing to work effectively and collaboratively with local health officers to meet the challenges of communicable disease control.

Very truly yours,

Donald P. Berens, Jr.
General Counsel

cc: Dennis Whalen
Dr. Lloyd Novick
JoAnn Bennison

Child Day Care Closures During an Emergency

There are four types of regulated day care programs in New York State: family day care homes (programs in a home for 3-6 children), group family day care homes (programs in a home for 7-12 children), school-age child care programs (programs for 7 or more school age children) and day care centers (non-home based programs for 3 or more children). The license or registration of any home or facility providing child day care may be temporarily suspended or limited by the Office of Children and Family Services without a hearing upon written notice to the operator of the facility following a finding that the public health or an individual's safety or welfare are in imminent danger (see Social Services Law § 390[10]). The holder of the license or registration is entitled to a hearing to contest the suspension or limitation. If a hearing is requested, the hearing must be scheduled to commence within 30 days of receipt of notice of the hearing request by the Office of Children and Family Services. Suspension or limitation continues until the condition requiring suspension or limitation is corrected or until a hearing decision is issued.

The New York State Office of Children and Family Services is the licensing and registration agency for day care centers outside of New York City and the licensing and registration agency for all school-age child care programs, family day care homes and group family day care homes in New York, both in and outside of New York City; the New York City Department of Health and Mental Hygiene (DOHMH) licenses day care centers in New York City. Therefore, in counties outside of New York City, local health commissioners should contact the State Commissioner of the Office of Children and Family Services when day care program closure due to an outbreak of influenza is indicated. Notice should also be provided to the local commissioner of social services. In New York City, the City health commissioner should contact the State Commissioner of the Office of Children and Family Services if closure of a school-age child care program, family day care home or group family day care home is indicated. Otherwise, NYC DOHMH can take action directly.

Alternatively, if continued operation of the day care program could constitute a nuisance or cause of danger or injury to life and health within the health district, the local health board or local health officer may order suppression of the nuisance (see Public Health Law Article 13). The local health officer should consult with an attorney when making this determination. The Governor can order abatement of public nuisances after examination and report by the State Commissioner of Health (See Public Health Law § 1301). The State Commissioner of Health can direct local boards of health and local commissioners to take action against a nuisance (see Public Health Law § 1303[4].)

If continued operation of the day care program would cause or maintain a condition or activity which constitutes danger to the public health and it would be prejudicial to the interests of the people to delay action for fifteen days, the State Commissioner of Health can order the day care program operator to discontinue the dangerous condition or activity or to take certain action immediately or within a specified period of less than fifteen days (see Public Health Law § 16).

State and local police officers may close streets or parts thereof to vehicular traffic or re-direct traffic when they deem it advisable at the time of a special emergency only for such period of time as is necessitated thereby for the public safety or convenience (see Vehicle and Traffic Law §§ 1602 and 1683). If it appears necessary to close any state, county or town roads in an emergency the state commissioner of transportation and county or town highway superintendents respectively may do so by filing certificates of necessity with the town clerk of the town in which the road is located (see Highway Law § 104). These authorities may be considered if it is necessary to prevent a day care program or programs from opening while an order for closure is pursued.

If a day care program is required to close in the context of a declared local state of emergency, the local chief executive may promulgate local emergency orders to protect life or property or to bring the emergency situation under control (see Executive Law § 24 [1]). Such orders may include the establishment of a curfew and the prohibition and control of pedestrian and vehicular traffic, except essential emergency vehicles and personnel; the designation of specific zones within which the occupancy or use of buildings and the ingress and egress of vehicles and persons may be prohibited or regulated; and the prohibition and control of the presence of persons on public streets and places. Such orders can be used to effectively close day care programs. The Director of the County Emergency Management Office or the local county executive should be contacted when such an order is needed.

If day care program closure is required in the context of a declared state disaster emergency, the Governor may, by executive order, temporarily suspend the specific provisions of any statute, local law, ordinance, or orders, rules or regulations or any parts thereof, including program operational requirements, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster (see Executive Law §29-a). Such orders may provide for suspension only under particular circumstances, and may provide for alteration or modification of the requirements of any statute, local law, ordinance, order, rule or regulation. If such an order is needed, the Director of the State Emergency Management Office should be contacted.

School (K-12) Closures During an Emergency

Generally, the school board or the school superintendent by delegation from the school board has authority to close a school to ensure the health of the students and staff. The superintendent is charged with the power and duty to be the chief executive officer of the school district, and to enforce all provisions of law and all rules and regulations relating to the management of the schools and other educational, social and recreational activities under the direction of the board of education (see Education Law § 1711[2][a] & [b]). By regulation, every board of education is required to develop school emergency management plans, which must address school cancellation and early dismissal (see 8 NYCRR § 155.17[d][7][i] & [ii]). If a school superintendent refuses or fails to act, the State Commissioner of Education may override the superintendent's decision and order the school closed.

The Commissioner of Education or his or her designee may order emergency response actions by individual school districts in the event that the local officials are unable or unwilling to take action deemed to be appropriate by State and/or county emergency personnel in accordance with county or State emergency preparedness plans or directives. 8 NYCRR § 155.17(m).

For closure of individual schools, local health commissioners should contact the local superintendent of schools when school closure due to an outbreak of influenza is indicated. If such efforts fail, the State Commissioner of Education can be reached through the local (BOCES) District Superintendent, except in the cities of Buffalo, Rochester, Syracuse, Yonkers and New York. If the school is in those cities contacts should be made directly with the Commissioner's office.

Alternatively, if continued operation of the school could constitute a nuisance or cause of danger or injury to life and health within the health district, the local health board or local health officer may order suppression of the nuisance (see Public Health Law Article 13). The local health officer should consult with an attorney when making this determination. The Governor can order abatement of public nuisances after examination and report by the State Commissioner of Health (see Public Health Law § 1301). The State Commissioner of Health can direct local boards of health and local commissioners to take action against a nuisance (see Public Health Law § 1303[4]).

Furthermore, every local board of health and local health officer has a duty to prevent the spread of communicable diseases within his/her jurisdiction by inspection and control of all persons and/or things infected with or exposed to disease (see Public Health Law § 2100[1]). Every board of health or local health officer has the authority to prohibit intercourse with or use of infected premises, places and things, and may require through disinfection before further intercourse with or use may occur (see Public Health Law § 2100[2][b]).

If continued operation of the school would cause or maintain a condition or activity which constitutes danger to the public health and it would be prejudicial to the interests

of the people to delay action for fifteen days, the State Commissioner of Health can order the school operator, including political subdivisions with jurisdiction, to discontinue the dangerous condition or activity or to take certain action immediately or within a specified period of less than fifteen days (see Public Health Law § 16).

State and local police officers may close streets or parts thereof to vehicular traffic or re-direct traffic when they deem it advisable at the time of a special emergency only for such period of time as is necessitated thereby for the public safety or convenience (see Vehicle and Traffic Law §§ 1602 and 1683). If it appears necessary to close any state, county or town roads in an emergency the state commissioner of transportation and county or town highway superintendents respectively may do so by filing certificates of necessity with the town clerk of the town in which the road is located (see Highway Law § 104). These authorities may be considered if it is necessary to prevent a school or schools from opening while an order for closure is pursued.

If school closure is required in the context of a declared local state of emergency, the local chief executive may promulgate local emergency orders to protect life or property or to bring the emergency situation under control (see Executive Law § 24[1]). Such orders may include the establishment of a curfew and the prohibition and control of pedestrian and vehicular traffic, except essential emergency vehicles and personnel; the designation of specific zones within which the occupancy or use of buildings and the ingress and egress of vehicles and persons may be prohibited or regulated; and the prohibition and control of the presence of persons on public streets and places. Such orders can be used to effectively close schools. The Director of the County Emergency Management Office or the local county executive should be contacted when such an order is needed.

If school closure is required in the context of a declared state disaster emergency, the Governor may, by executive order, temporarily suspend the specific provisions of any statute, local law, ordinance, or orders, rules or regulations or any parts thereof, including school attendance and operational requirements, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster (see Executive Law §29-a). Such orders may provide for suspension only under particular circumstances, and may provide for alteration or modification of the requirements of any statute, local law, ordinance, order, rule or regulation. If such an order is needed, the Director of the State Emergency Management Office should be contacted.

**College and University Closure During an Emergency
State University of New York Colleges and Universities**

**State University of New York
PANDEMIC INFLUENZA
Policy Statement**

ISSUE: **Suspension of Activity on Campus**

AUTHORITY: *A campus may not be closed unless so ordered by the Governor.*
Short of formal closure, campus presidents are authorized to suspend classes and activities and to otherwise limit the number of people on campus. This includes authorization to send students home and to direct non-essential employees to work from home, while maintaining essential functions on campus.

POLICY: **Campus Programs Suspended**

Depending upon the circumstances and severity of a pandemic, campus presidents may decide to suspend campus academic and non-instructional activities and/or classes. Such decisions, as described more fully below, will be based on recommendations from one or more of the following: campus health officials, State or local DOH, SUNY Chancellor and may consider factors such as transmissibility, morbidity, geographic spread of disease, proximity of confirmed cases, closing of K-12 public schools, falling class attendance, or rising employee absenteeism.

Suspension of activities may be categorized as follows:

| <u>SUSPENSION:</u> | Type | Definition |
|---------------------------|-------------|---|
| | Type I | Social Distancing is invoked. ¹ Non-instructional activities curtailed/suspended. <u>Objective:</u> Limit person to person contact/transmission of influenza. |
| | Type II | Students may leave, but not reenter. Exception is approved entry by parents of students providing |

¹ See Policy on Social Distancing

student support for exit from the campus. Instructional activities continue in modified form where possible.
Objective: Limit the introduction of influenza virus to campus population.

Type III All instructional activities suspended. Students sent home. Entry to campus denied. Non-essential employees² directed to work from home. Campus presidents have the authority to direct non-essential employees not to report to work. In this case, such employees must be directed to work at home. Non-essential employees who are directed to work at home should, where possible, be performing their assigned duties or be available to do so during their normally scheduled work hours. These employees will be considered in pay status without charge to accruals. Please see the attached GOER memo for further information.
Objective: Secure and maintain the physical integrity of SUNY properties.

RECOMMENDATIONS:

It is the responsibility of the local campus to develop procedures that will:

1. Implement the designated Suspension Type as determined by campus.
2. Identify number and names of students who would be unable to return home should a campus suspension of activities occur and develop plan for housing/feeding.
3. Develop procedures for communication with students and employees as well as the reactivation of campus programs.

Date: January 2, 2007

Independent Colleges and Universities

The State Education Department prescribes the academic criteria for independent colleges and universities through its regulations. However, the day-to-day operation of the colleges and universities is the responsibility of the board of trustees for the individual institutions. The authority to cancel classes, send students home, or completely shut down the campus rests with the governing body of the schools. If

² See Policy on Essential Functions

closure is warranted and the governing body refuses to act, there are several means to go about mandating closure. Please refer to Appendix 1-F, Business Closure During an Emergency, for this information.

Business Closures During an Emergency

If continued operation of a business could constitute a nuisance or cause of danger or injury to life and health within the health district, the local health board or local health officer may order suppression of the nuisance (see Public Health Law Article 13). The local health officer should consult with an attorney when making this determination. The Governor can order abatement of public nuisances after examination and report by the State Commissioner of Health (see Public Health Law § 1301). The State Commissioner of Health can direct local boards of health and local health commissioners to take action against a nuisance (see Public Health Law § 1303[4]).

Furthermore, every local board of health and local health officer has a duty to prevent the spread of communicable diseases within his/her jurisdiction by inspection and control of all persons and/or things infected with or exposed to disease (see Public Health Law § 2100[1]). Every board of health or local health officer has the authority to prohibit intercourse with or use of infected premises, places and things, and may require through disinfection before further intercourse with or use may occur (see Public Health Law § 2100[2][b]).

If a business is causing, engaging in or maintaining a condition or activity which constitutes danger to the public health and it therefore appears to be prejudicial to the interests of the people to delay action for fifteen days, the State Commissioner of Health can order the business operator to discontinue the dangerous condition or activity or to take certain action immediately or within a specified period of less than fifteen days (see Public Health Law § 16).

Business owners have a duty to protect the health and safety of their employees. The business must be operated and conducted so as to provide reasonable and adequate protection to the lives, health and safety of all employees (see Labor Law § 200[1]). If the Commissioner of Labor finds that any area of the business is in a dangerous condition, he may post a notice in the area warning all persons of the danger therein. The notice shall prohibit further work in, or occupancy of the area until the dangerous condition is corrected and the commissioner removes the notice (see Labor Law § 200[2]).

State and local police officers may close streets or parts thereof to vehicular traffic or re-direct traffic when they deem it advisable at the time of a special emergency only for such period of time as is necessitated thereby for the public safety or convenience (see Vehicle and Traffic Law §§ 1602 and 1683). If it appears necessary to close any state, county or town roads in an emergency the state commissioner of transportation and county or town highway superintendents respectively may do so by filing certificates of necessity with the town clerk of the town in which the road is located (see Highway Law § 104). These authorities may be considered to prevent a business or businesses from opening while an order for closure is pursued.

If business closure is required in the context of a declared local state of emergency, the local chief executive may promulgate local emergency orders to protect life or property or to bring the emergency situation under control (see Executive Law § 24[1]). Such orders may include the establishment of a curfew and the prohibition and control of pedestrian and vehicular traffic, except essential emergency vehicles and personnel; the designation of specific zones within which the occupancy or use of buildings and the ingress and egress of vehicles and persons may be prohibited or regulated; the prohibition and control of the presence of persons on public streets and places; and the regulation and closing of places of amusement and assembly. Such orders can be used to effectively close business. The Director of the County Emergency Management Office or the local county executive should be contacted when such an order is needed.

If business closure is required in the context of a declared state disaster emergency, the Governor may, by executive order, temporarily suspend the specific provisions of any statute, local law, ordinance, or orders, rules or regulations or any parts thereof, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster (see Executive Law § 29-a). Such orders may provide for suspension only under particular circumstances, and may provide for alteration or modification of the requirements of any statute, local law, ordinance, order, rule or regulation. If such an order is needed, the Director of the State Emergency Management Office should be contacted.

Suspension of Public Meetings During an Emergency

If the holding of a public meeting would constitute a nuisance or cause of danger or injury to life and health within the health district, the local health board or local health officer may order suppression of the nuisance (see Public Health Law Article 13). The local health officer should consult with an attorney when making this determination. The Governor can order abatement of public nuisances after examination and report by the State Commissioner of Health (see Public Health Law § 1301). The State Commissioner of Health can direct local boards of health and local commissioners to take action against a nuisance (see Public Health Law § 1303[4]).

If the holding a public meeting or the circumstances under which it is held would constitute a danger to the public health and it therefore appears to be prejudicial to the interests of the people to delay action for fifteen days, the State Commissioner of Health can order the person, including political subdivisions with jurisdiction, to cancel the meeting or change the circumstances under which it can be held immediately or within a specified period of less than fifteen days (see Public Health Law § 16).

State and local police officers may close streets or parts thereof to vehicular traffic or re-direct traffic when they deem it advisable at the time of a special emergency only for such period of time as is necessitated thereby for the public safety or convenience (see Vehicle and Traffic Law §§ 1602 and 1683). If it appears necessary to close any state, county or town roads in an emergency the state commissioner of transportation and county or town highway superintendents respectively may do so by filing certificates of necessity with the town clerk of the town in which the road is located (see Highway Law § 104). These authorities may be considered if there is a need to effectively cancel public meetings while an order suspending such meetings is pursued.

If suspension of public meetings is required in the context of a declared local state of emergency, the local chief executive may promulgate local emergency orders to protect life or property or to bring the emergency situation under control (see Executive Law § 24[1]). Such orders may include the establishment of a curfew and the prohibition and control of pedestrian and vehicular traffic, except essential emergency vehicles and personnel; the designation of specific zones within which the occupancy or use of buildings and the ingress and egress of vehicles and persons may be prohibited or regulated; the prohibition and control of the presence of persons on public streets and places; and the regulation and closing of places of amusement and assembly. Such orders can be used to effectively close schools. The Director of the County Emergency Management Office or the local county executive should be contacted when such an order is needed.

If suspension of public meetings is required in the context of a declared state disaster emergency, the Governor may, by executive order, temporarily suspend the specific provisions of any statute, local law, ordinance, or orders, rules or regulations or any parts thereof, if compliance with such provisions would prevent, hinder, or delay action

necessary to cope with the disaster (see Executive Law § 29-a). Such orders may provide for suspension only under particular circumstances, and may provide for alteration or modification of the requirements of any statute, local law, ordinance, order, rule or regulation. If such an order is needed, the Director of the State Emergency Management Office should be contacted.

**A Guide to New York State Laws Governing Public Health Emergency
Preparedness and Response**

This compilation of New York State statutory and regulatory authority is intended as a convenient resource for state and local health officials involved in planning for potential bioterrorism and other public health emergencies, including those arising from a radiological source.

I. PLANNING FOR A PUBLIC HEALTH EMERGENCY

A. DISASTER PREPAREDNESS PUBLIC POLICY STATEMENT

Authority: Executive Law 20(1) states that it is the policy of the State that:

- (a) local government and emergency service organizations continue their essential role as the first line of defense in times of disaster, and that the State provide appropriate supportive services to the extent necessary;
- (b) local chief executives take an active and personal role in the development and implementation of disaster preparedness programs and be vested with authority and responsibility in order to assure the success of such programs;
- (c) State and local natural disaster and emergency response functions be coordinated in order to bring the fullest protection and benefit to the people;
- (d) State resources be organized and prepared for immediate effective response to disasters which are beyond the capability of local governments and emergency service organizations; and
- (e) State and local plans, organizational arrangements, and response capability required to execute the provisions of Executive Law Article 2-B (Disaster Preparedness) shall at all times be the most effective that current circumstances and existing resources allow.

B. DISASTER PREPAREDNESS COMMISSION PLAN

Authority: Executive Law 21 provides for the creation of a Disaster Preparedness Commission, which includes the commissioners of the following State agencies: Health, Transportation, Division of Criminal Justice Services, Education, Economic Development, Agriculture and Markets, Housing and Community Renewal, General Services, Labor, Environmental Conservation, Mental Health, State Energy Research and Development Authority, State Police, Insurance, Banking, and State. The Disaster Preparedness Commission also includes the State Fire Administrator, the chair of the Public Service Commission, the Adjutant General, the chairman of the State Thruway Authority, the chief professional officer of the State coordinating chapter of the American Red Cross and other members appointed by the Governor.

Among the Disaster Preparedness Commission's duties set forth at Executive Law 21(3)(c) is the duty to prepare State disaster preparedness plans.

C. CIVIL DEFENSE DRILLS

Authority: Executive Law 29-b(1) provides that the Governor may, in his discretion, direct the State Civil

Defense Commission to conduct a civil defense drill, under its direction, in which all or any of the civil defense forces of the State may be utilized to perform the duties assigned to them in a civil defense emergency, for the purpose of protecting and preserving human life in a disaster. In such event, civil defense forces in the State shall operate under the direction and command of the State Director of Civil Defense, who is, pursuant to Military Law 11, the Adjutant General.

Executive Law 29-b(2) and (3) respectively set forth provisions governing use of civil defense forces by the chief executives of counties and cities, including provisions relating to drills.

II. REPORTING AND DETECTION

The ability to detect and respond effectively to an unannounced act of bioterrorism may depend significantly upon timely and complete reporting of cases of communicable disease.

A. PRIMARY REPORTERS OF CASES OF COMMUNICABLE DISEASE AND OTHER INDICATORS OF DISEASE OUTBREAK

1. Local Health Officers Outside the City of New York

What is reported: All cases of such communicable diseases as may be required by State Department of Health (DOH)

Report made to: State DOH

Manner of reporting: Original reports or summary reports when authorized by State DOH

When reported: Promptly

Authority: Public Health Law 2103 requires every local health officer to report promptly to the State DOH all cases of communicable diseases as may be required by State DOH. Public Health Law 2110 excepts the provisions of Public Health Law 2103 from applying to the City of New York. See instead New York City Health Code Article 11.

2. County Health Commissioners Outside the City of New York

What is reported: Original reports of communicable disease cases.

Report made to: State DOH.

Manner of reporting: Original reports or summary reports when authorized by State DOH.

When reported: Within 24 hours after receipt by county health commissioner.

Authority: Public Health Law 2104(1) requires the health officer of each city, village, town and consolidated health district included as part of any county or part-county health district, to transmit daily all original reports of communicable disease cases to the county

health commissioner. Public Health Law 2104(2) requires the county health commissioner to transmit to State DOH the original reports of communicable disease cases within 24 hours after he or she receives them. Public Health Law 2110 excepts the provisions of Public Health Law 2104 from applying to the City of New York. See instead New York City Health Code Article 11.

3. Hospitals

What is reported: “Case”, defined in 10 NYCRR 2.2(b) as a person diagnosed to have a particular disease or condition; “outbreak”, defined in 10 NYCRR 2.2(c) as an increased incidence of disease above its expected baseline level.

Report made to: State DOH and to the city, county or district health officer.

When reported: Not specified.

Manner of reporting: as specified by the Commissioner of Health (10 NYCRR 405.11(c)).

Authority: Public Health Law 201(1)(c) authorizes DOH to supervise the reporting and control of disease. Public Health Law 2803(1)(a) grants the Commissioner of Health the power to inquire into the operation of hospitals. 10 NYCRR 405.11(c), which requires the hospital professional responsible for the hospital-wide infection control program to report to DOH any increased incidence of nosocomial infections, must be read with the 10 NYCRR 2.2(a) definition, which states that “for public health reporting purposes, hospital associated infections include outbreaks or increased incidence of disease due to microbiological agents or their toxic products”. 10 NYCRR 2.1 specifies the infectious, contagious or communicable diseases which must be reported pursuant to various provisions contained within 10 NYCRR Part 2 (Communicable Diseases), which was promulgated pursuant to Public Health Law 225. Nosocomial infections are reportable by hospitals pursuant to 10 NYCRR 405.11(c).

4. Physicians Outside the City of New York

What is reported: The full name, age and address of every person with a suspected or confirmed case of a communicable disease or any outbreak of communicable disease, together with the name of the disease, and any additional information requested by the health officer in the course of a communicable disease investigation.

Report made to: City, county or district health officer within whose jurisdiction the patient is.

When reported: Immediately or within 24 hours from the time the case is first seen by the physician.

Manner of reporting: Telephone, facsimile and other electronic transmission if indicated, and also in writing unless the State Health Commissioner approves waiver of written notice.

Authority: Public Health Law 2101 requires that every physician shall immediately give notice of every case of communicable disease required by State DOH to be reported to it, to the health officer of the local health district where such disease occurs. Existing regulations promulgated pursuant to Public Health Law 225, and set forth at 10 NYCRR 2.10, require every physician to report to the city, county, or district health officer, within whose jurisdiction the patient is, specified information concerning every person with a suspected or confirmed case of a communicable disease or any outbreak of

communicable disease, within 24 hours from the time the case is first seen by the physician. Reports shall be made by telephone, facsimile or other electronic transmission if indicated, and shall also be made in writing, except that the written notice may be omitted with the approval of the State Commissioner of Health. Although direct reporting to State DOH is not currently required, when a communicable disease is reported to a city, county or district health officer, a copy is retained in that office, and another copy of the report must be reported to State DOH, pursuant to 10 NYCRR 2.1(b).

5. Physicians Within the City of New York

Authority: Public Health Law 2110 excepts the City of New York from, among other requirements, the provisions of Public Health Law 2101 described in paragraph 4 above. See instead New York City Health Code Article 11.

6. Nursing homes, diagnostic and treatment centers, other Public Health Law Article 28 facilities

What is reported: Cases of communicable diseases as defined in 10 NYCRR 2.2(b).

Report made to: State DOH and to the city, county or district health officer in whose jurisdiction the institution is located.

When reported: Not specified.

Manner of reporting: Not specified.

Authority: 10 NYCRR 2.10(a) provides that when a case of communicable disease occurs in a facility licensed under Article 28 of the Public Health Law, the person in charge of the facility shall report the case to the State Department of Health and to the city, county or district health officer in whose jurisdiction the institution is located.

7. Clinical Laboratories

What is reported: Identity of person from whom specimen is taken, name of physician sending specimen, other facts pertinent to the examination. Tests performed and such other information as the Department of Health may require to carry out the provisions of Title V, Article 5 of the Public Health Law. Also, such information and data concerning the laboratory's technical operation as may be specified by the Department.

Report made to: Local health official and State DOH.

When reported: Immediately for communicable disease reporting.

Manner of reporting: In a form prescribed by the Department.

Authority: Public Health Law 2102(1) requires that when any laboratory examination discloses evidence of communicable disease, the results of such examination together with all required pertinent facts, shall be immediately reported by the person in charge of the laboratory or the person making such examination to the local or state health official to whom the attending physician is required to report such case. Public Health Law 576(2) authorizes the State DOH to require clinical laboratories and blood banks to submit, in a form prescribed by the Department, periodic reports of tests performed and such other information as the Department may require to carry out the provisions of Title V, Article 5. 10 NYCRR Part 58-1.11(a) states that when requested, a laboratory shall submit reports containing such information and data concerning its technical operation as may be specified by the Department.

8. State Institutions

What is reported: Cases of communicable diseases.

Report made to: State DOH and to city, county or district health officer.

When reported: Not specified.

Manner of reporting: Not specified.

Authority: Public Health Law 2105 requires the director or person in charge of each state institution to report immediately an outbreak of a communicable disease in such institution to the State Health Commissioner and as may otherwise be provided in the State Sanitary Code. 10 NYCRR 2.10(a) provides that when a case of communicable disease occurs in a State institution or a facility licensed under Article 28 of the Public Health Law, the person in charge of the institution or facility shall report the case to the State Department of Health and to the city, county or district health officer in whose jurisdiction such institution is located.

9. Public Health Nurses and All Other Persons When No Physician Is In Attendance

What is reported: The name and address of any individual affected with any disease presumably communicable.

Report made to: City, county or district health officer.

When reported: Immediately.

Manner of reporting: Not specified.

Authority: 10 NYCRR 2.12 provides that when no physician is in attendance, it shall be the duty of the head of a private household or the person in charge of any institution, school, boarding house, camp or vessel or any public health nurse or any other person having knowledge of an individual affected with any disease presumably communicable, to report immediately the name and address of such person to the city, county, or district health officer.

10. Coroners, Medical Examiners, Pathologists

What is reported: Case of any individual who at time of death was apparently affected with a communicable disease, based on examination of the corpse or from history of events leading to death.

Report made to: City, county or district health officer.

When reported: Within 24 hours of determination.

Manner of reporting: By telephone, facsimile transmission or other electronic communication if indicated, and also in writing, except that the written notice may be omitted with the approval of the State Health Commissioner.

Authority: 10 NYCRR 2.11 provides that if a pathologist, coroner, medical examiner, or other person determines from examination of a corpse or from history of the events leading to death that at the time of death this individual apparently was affected with a communicable disease, he/she shall report the case within 24 hours to the proper health authority according to the manner indicated in 10 NYCRR 2.10 as if the diagnosis had been established prior to death. Note that the State Department of Health is not a direct recipient of such information pursuant to 10 NYCRR 2.10 but is an indirect recipient pursuant to 10 NYCRR 2.1(b).

B. REGULATION OF LIVE PATHOGENIC MICROORGANISMS OR VIRUSES

Authority: This is an area regulated primarily by the Federal government. It is important because of the potential threat of diversion of dangerous pathogens for bioterrorism. In addition to the State law cited below, see also Title 42 Code of Federal Regulations Part 72, entitled Interstate Shipment of Etiologic Agents, promulgated pursuant to the Antiterrorism Act of 1996, Pub.L. No. 104-132 which, among other things, directed the Federal Centers for Disease Control and Prevention to establish a regulatory scheme to identify biological agents posing a threat to the public health and to regulate their transfer and use through Federal rule. See also the USA Patriot Act of 2001(Pub. Law 107-56, section 817); 18 U.S.C. 175 and 175b.

Public Health Law Article 32 (Live Pathogenic Microorganisms or Viruses) requires that no person other than a licensed practitioner of medicine, dentistry, or veterinary medicine or a person under their direct supervision shall possess or cultivate live pathogenic microorganisms or viruses other than vaccine virus, subject to certain exceptions. Public Health Law 3201(1),(2) requires that no person shall sell or convey any live pathogenic microorganisms or viruses other than vaccine virus to any other person without permission from the State Commissioner of Health, or the New York City Health Department if within that city. However, this requirement does not apply to diseased tissue, exudate, or other specimens which are sent by physicians, dentists or veterinarians to laboratories for examination as an aid to the diagnosis or control of disease.

III. STATE AND LOCAL GOVERNMENT RESPONSE PROVISIONS

A. AT ONSET OF PUBLIC HEALTH EMERGENCY

1. Actions of the Governor

a. Governor May Declare a Disaster Emergency

Authority: Executive Law 28(1),(3) provides that whenever the Governor, on his own initiative or pursuant to a request from one or more chief executives, finds that a disaster has occurred or may be imminent, for which local governments are unable to respond adequately, he shall declare a disaster emergency by executive order, which describes the disaster and affected area, and which remains in effect for a period not to exceed 6 months unless extended by executive order for additional limited periods.

Disaster is defined at Executive Law 20(2)(a) as the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made causes, including, but not limited to, fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, **epidemic**, air contamination, blight, drought, infestation, explosion, radiological accident, water contamination, bridge failure or bridge collapse.

State disaster emergency is defined at Executive Law 20(2)(b) as a period beginning with a declaration by the Governor that a disaster exists and ending upon its termination.

b. Governor May Invoke the New York State Defense Emergency Act of 1951

Authority: The New York State Defense Emergency Act of 1951 (Chapter 784, Laws of 1951), could be invoked following an “attack”, defined to include any case involving use of bacteriological or biological means, thereby empowering a State Defense Council, chaired by the Governor, to exercise a broad range of extraordinary powers. (See appendices which contain the complete statute).

2. Local Government Actions

a. Chief Executive of a County, City, Town or Village May Proclaim a Local State of Emergency

Authority: Executive Law 24(1) provides that specified chief executives (defined at Executive Law 20(2)(f)) may proclaim a local state of emergency within any part or all of the territorial limits of such local government under specified circumstances.

Local state of emergency may arise in the event of a disaster, rioting, catastrophe, or similar public emergency within the territorial limits of any county, city, town or village. See Executive Law 24(1).

B. DURING PUBLIC HEALTH EMERGENCY

1. Actions of the Governor

a. Governor May Temporarily Suspend State and Local Laws and Regulations Under Specified Conditions

Authority: Under Executive Law 29-a, the Governor may, by executive order and subject to the State and Federal Constitutions and Federal statutes and regulations, and after seeking the advice of the Disaster Preparedness Commission, temporarily *suspend* specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.

b. Governor Shall Take Specified Actions Following Declaration of Disaster Arising from Radiological Accident

Authority: Executive Law 28(2) requires that upon the Governor’s declaration of a disaster arising from a radiological accident, the Governor or his designee, shall direct one or more chief executives and emergency services organizations to: (a) notify the public that an emergency exists; and (b) take appropriate protective actions pursuant to the radiological emergency preparedness plan approved pursuant to sections 22 and 23 of the Executive Law. The Governor or his designee shall also have the authority to direct that other actions be taken by such chief executives pursuant to their authority under Executive Law 24.

c. Governor May Request Federal Assistance

Authority: Executive Law 28(4) provides that whenever the Governor finds that a disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected jurisdictions, he shall make an appropriate

request for Federal assistance available under Federal law, and may make available out of any funds provided under the governmental emergency fund or such other funds as may be available, sufficient funds to provide the required State share of grants made under any Federal program for meeting disaster related expenses.

d. Governor May Direct State Agencies to Provide Disaster Emergency Assistance

Authority: Executive Law 29 provides that upon the declaration of a state disaster emergency, the Governor may direct any and all agencies of the state government to provide assistance under the coordination of the Disaster Preparedness Commission. Such State assistance may include: (1) utilizing, lending, or giving to political subdivisions, with or without compensation, equipment, supplies, facilities, services or state personnel, and other resources, other than the extension of credit; (2) distributing medicine, medical supplies, food and other consumable supplies through any public or private agency authorized to distribute such items; (3) performing on public or private lands temporary emergency work essential for the protection of public health and safety, clearing debris and wreckage, making emergency repairs to and temporary replacements of public facilities of political subdivisions damaged or destroyed as a result of such disaster; and (4) making such other use of their facilities, equipment, supplies and personnel as may be necessary to assist in coping with the disaster or any resulting emergency.

e. Governor May Order the Organized Militia into Service of the State

Authority: Military Law 6(1) provides that the Governor shall have power, in case of disaster, to order the organized militia into the active service of the State for such period, to such extent, and in such manner as he may deem necessary. Pursuant to Military Law 9, whenever the organized militia is employed under Military Law 6, the Governor may by proclamation declare the county or city in which the troops are serving to be under *martial rule*, if in the Governor's judgment the maintenance of law and order will thereby be promoted. Martial rule is subject to the Federal and State Constitutions and is governed by the Code of Military Justice. See Military Law Article VII.

f. Governor May Issue Call to the State Police

Authority: Executive Law 223(1) sets forth the duties and powers of the Superintendent and members of the New York State Police. The State Police are subject to the call of the Governor and are empowered to cooperate with any other department of the State or with local authorities. Upon the direction of the Governor or upon the request of the mayor of a city with the approval of the Governor, the State Police may exercise their powers within the limits of any city to suppress rioting and disorder.

g. Governor May Require State Health Commissioner to Examine Nuisances and Order Their Abatement or Removal

Authority: Public Health Law 1301(1) provides that whenever required by the Governor, the State Commissioner of Health shall make an examination concerning nuisances or questions affecting the security of life and health in any locality, and shall report the results to the Governor within the time prescribed by him. The Governor may declare the matters public nuisances and may order them to be changed, abated or removed as he

may direct, pursuant to Public Health Law 1301(2). Pursuant to Public Health Law 1301(3), the Governor may, by a precept under his hand and official seal, require the district attorney, sheriff and other officers of the county where such nuisance is maintained, to take all necessary measures to execute such order and cause it to be obeyed.

Application of these provisions to a situation arising from bioterrorism would assume the resulting contamination of property which might be identified and termed a public *nuisance*.

2. State Agency Actions

a. State Health Commissioner and New York State Department of Health Continue to Exercise Powers and Duties Regarding Public Health Matters as Provided by Law

Authority: Public Health Law 200 provides for the existence of a Department of Health in State government, headed by a Commissioner of Health of the State of New York. Public Health Law 206(1)(a) states the duty of the Commissioner of Health to take cognizance of the interests of public health and exercise functions, powers and duties prescribed by law.

Supervision of local boards of health and health officers — Public Health Law 206(1)(b) states the duty of the Commissioner of Health to exercise general supervision over the work of all local boards of health and health officers, unless provided otherwise.

Promulgation of regulations by Public Health Council --- Public Health Law 225(4) and 225(5)(a) provide that the Public Health Council, which exists within the Department of Health, shall have the power to establish, amend and repeal regulations known as the State Sanitary Code, which may deal with any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York and with any matters as to which the jurisdiction is conferred upon the Public Health Council.

Supervision of reporting and control of disease --- Public Health Law 206(1)(d) states the duty of the Commissioner to investigate the causes of disease, epidemics, the sources of mortality and the effect of various factors on public health. Public Health Law 201(1)(c) states that the Department of Health shall, as provided by law, supervise the reporting and control of disease.

Supervision of nuisance abatement — Public Health Law 201(1)(n) requires the Department to exercise control over and supervise the abatement of nuisances affecting or likely to affect public health. Public Health Law 1300 confers on the Commissioner of Health all necessary powers to make investigations and examinations into nuisances, or questions affecting the security of life and health in any locality. Pursuant to Public Health Law 1303(4) and 10 NYCRR 8.5, the Commissioner of Health may mandate that local boards of health outside of New York City convene and take directed action necessary for the public good, including the abatement of the spread of disease.

Deputization of local health officers --- Pursuant to Public Health Law 206(9), the Commissioner of Health may deputize in writing any local health officer to do or perform in her place and stead those duties set forth at Public Health Law 206(1)(d) pertaining to the investigation of the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health.

Modification of local board of health orders --- Pursuant to Public Health Law 206(4)(b), the Commissioner of Health may annul or modify an order, regulation, by-law or ordinance of a local board of health concerning a matter which in her judgment affects the public health beyond the territory over which such local board of health has jurisdiction.

Access to facilities and property --- Pursuant to Public Health Law 206(2), the Commissioner of Health or designee may, without fee or hindrance, enter, examine and survey all grounds, erections, vehicles, structures, apartments, buildings and places.

Expenditure of funds --- Public Health Law 201(1)(p) provides that the Department of Health shall receive and expend funds for public health purposes as provided by law.

Distribution of products --- Public Health Law 201(1)(e) requires the Department of Health to produce, standardize and distribute diagnostic, prophylactic and therapeutic products as provided by law.

Regulation of public health aspects of radiation — Public Health Law 201(1)(r) requires the Department of Health to supervise and regulate the public health aspects of ionizing radiation and non-ionizing electromagnetic radiation.

Promotion of disease education --- Public Health Law 201(1)(g) requires the Department of Health to promote education in the prevention and control of disease as provided by law.

b. State Health Commissioner May Take Summary Action to Protect Public Health

Authority: Public Health Law 16 provides that whenever the Commissioner, after investigation, is of the opinion that any person is causing, engaging in or maintaining a condition or activity which in her opinion constitutes danger to the health of the people, and that it therefore appears to be prejudicial to the interests of the people to delay action for 15 days until an opportunity for a hearing can be provided in accordance with the provisions of Public Health Law section 12-a, the Commissioner shall order the person, including any State agency or political subdivision having jurisdiction, by written notice to discontinue such dangerous condition or activity or take certain action immediately or within a specified period of less than 15 days. As promptly as possible thereafter, within not to exceed 15 days, the Commissioner shall provide the person an opportunity to be heard and to present any proof that such condition or activity does not constitute a danger to the health of the people.

c. Commissioner of General Services May Authorize State Agency Emergency Procurements

Authority: State Finance Law 163(10)(b) provides that procurements made to meet emergencies arising from unforeseen causes may be made without a formal competitive process and shall only be made under unusual circumstances and shall include a determination by the Commissioner of General Services or the State agency that the specifications or requirements for the purchase have been designed in a fair and equitable manner. The purchasing agency is required to document in the procurement record the nature of the emergency giving rise to the procurement.

Emergency is defined at State Finance Law 163(1)(b) as an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

3. Local Government Actions

a. Local Boards of Health and Health Officers Have the Duty and Authority to Control Infectious Diseases by Means that Include Isolation and Quarantine

Authority: Public Health Law 2100 (1) requires every local board of health and every health officer to guard against the introduction of such communicable diseases as are designated in the State Sanitary Code, by the proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases. Public Health Law 2100(2) places a legal duty upon local boards of health and health officers to: (a) provide for care and isolation of cases of communicable disease in a hospital or elsewhere when necessary for protection of the public health and (b) subject to the provisions of the State Sanitary Code, prohibit and prevent all intercourse and communication with or use of infected premises, places, and things, and require, and if necessary provide the means for their thorough purification and cleansing before resumption of their use. Pursuant to Public Health Law 2110, New York City is exempt from the requirements contained in Public Health Law 2100. See New York City Health Code Article 11.

Isolation is defined at 10 NYCRR 2.25(d) as consisting of the separation from other persons, in such places, under such conditions, and for such time, as will prevent transmission of the infectious agent, of persons known to be ill or suspected of being infected.

Quarantine of premises is defined at 10 NYCRR 2.25(e) to consist of (1) prohibition of entrance into or exit from the premises, as designated by the health officer, where a case of communicable disease exists of any person other than medical attendants and such others as may be authorized by the health officer; (2) prohibition, without permission and instruction from the health officer, of the removal from such premises of any article liable to contamination with infective material through contact with the patient or with his secretions or excretions, unless such article has been disinfected.

Pursuant to 10 NYCRR 2.29, whenever a case of a highly communicable disease (as defined in 10 NYCRR 2.1) comes to the attention of the city, county or district health officer, he or she shall isolate such patients as in his or her judgment are deemed

necessary. Pending official action by the health officer, it is the legal duty of every attending physician, upon discovering a case of a highly communicable disease (as defined in 10 NYCRR 2.1) to immediately isolate the patient. 10 NYCRR 2.33 restricts the removal of persons affected with any highly communicable disease (as defined in 10 NYCRR 2.1) from one health district into another.

Under case law, including *Crayton v. Larabee* (1917) 220 N.Y. 493, isolation and quarantine must not be arbitrary, unreasonable or oppressive, and due process protections must be afforded to persons subject to isolation and quarantine orders of public health officers.

b. Local Boards of Health and Health Officers Have Duty to Investigate, Suppress and Remove Nuisances and Conditions Detrimental to Life and Health

Authority: Public Health Law 1303 provides that every local board of health and local health officer shall receive and examine into all complaints concerning nuisances, or causes of danger or injury to life and health within the health district. Every local board of health shall order the suppression and removal of all such nuisances and conditions.

Application of this provision to a situation arising from bioterrorism would assume the resulting contamination of property which might be identified and termed a *nuisance*.

c. City Commissioner of Health (or Health Officer in Cities with Population of Less than 175,000) May Exercise Extraordinary Powers in Case of Great and Imminent Peril to the Public Health

Authority: Public Health Law 370(1) provides that in case of great and imminent peril to the public health of the city, it shall be the duty of the city health commissioner, or health officer in cities having a population of less than 175,000, with the approval and consent of the legislative authority if it is practicable to convene such authority for prompt action, or if not, when approved by the board of estimate or similar authority, to take such measures and to do, order or cause to be done such acts and to make such extraordinary expenditures, in excess of the sum appropriated to the city department of health, as provided by law, for the preservation and protection of the public health of such city as he or she may deem necessary and proper.

d. Chief Executive of County, City, Town or Village May Promulgate Emergency Orders Following Proclamation of a Local State of Emergency

Authority: Executive Law 24(1) provides that following the proclamation of a local state of emergency and during its continuance, the chief executive may promulgate local emergency orders to protect life and property or to bring the emergency situation under control.

Control of roads and public areas — As illustration, such orders may, within any part or all or the territorial limits of such local government provide for: the establishment of a curfew and the prohibition and control of pedestrian and vehicular traffic, except essential emergency vehicles and personnel; the prohibition and control of the presence of persons on public streets and places.

Designation of emergency facilities—Such orders may also provide for the establishment or designation of emergency medical shelters.

e. Chief Executive of County, City, Town or Village May Suspend Local Law Under Specified Conditions

Authority: Pursuant to Executive Law 24(1)(g), a local emergency order may provide for the *suspension* within any part or all of its territorial limits of any of its local laws, ordinances or regulations, or parts thereof, subject to Federal and State constitutional, statutory and regulatory limitations, which may prevent, hinder, or delay necessary action in coping with a disaster or recovery from a disaster. This extraordinary power is first subject to two conditions: (1) a request has been made by the appropriate chief executive of the county or city to the Governor in accordance with Executive Law 24(7); or (2) the Governor has declared a state of disaster emergency pursuant to Executive Law 28. Also, such suspension of any local law, ordinance or regulation is subject to specified standards and limits:

- (i) no suspension shall be made for a period in excess of 5 days, provided, however, that upon reconsideration of all the relevant facts and circumstances, a suspension may be extended for additional periods not to exceed 5 days each during the pendency of the state of emergency;
- (ii) no suspension shall be made which does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort;
- (iii) any such suspension order shall specify the local law, ordinance or regulation, or part thereof, suspended and the terms and conditions of the suspension;
- (iv) the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such local law, ordinance or regulation suspended, and may include other terms and conditions;
- (v) any such suspension order shall provide for the minimum deviation from the requirements of the local law, ordinance or regulation suspended consistent with the disaster action deemed necessary; and
- (vi) when practicable, specialists shall be assigned to assist with the related emergency actions to avoid adverse effects resulting from the suspension.

f. Chief Executive of County and Certain Chief Executives of Cities May Request Governor to Provide Assistance Following Declaration of Local State of Emergency Involving Disaster Beyond Capability of Local Government to Meet

Authority: Executive Law 24(7) provides that whenever a local state of emergency has been declared pursuant to this section, the chief executive of the county in which the local state of emergency has been declared, or where a county is wholly contained within a city, the chief executive of the city, may request the Governor to provide assistance under the Executive Law, provided that such chief executive determines that the disaster is beyond the capacity of local government to meet adequately and State assistance is necessary to supplement local efforts to save lives and to protect property, public health and safety, or to avert or lessen the threat of a disaster.

IV. PROVISIONS GOVERNING CRITICAL AREAS

A. SAFE DISPOSAL OF INFECTIOUS WASTE

Authority: See Public Health Law Article 13, Title XIII, entitled Storage, Treatment, and Disposal of Regulated Medical Waste. Included are the following definitions:

Regulated medical waste – 1389-aa(1)

Infectious agents – 1389-aa(5)

Cultures and stocks – 1389-aa(1)(a)

Human pathological waste– 1389-aa(1)(b)

Sharps– 1389-aa(1)(d)

In addition, see 6 NYCRR 364.9, which establishes a program for tracking and managing medical waste shipments pursuant to the Environmental Conservation Law.

B. SAFE DISPOSAL OF HUMAN REMAINS

Authority: See generally Public Health Law Article 41, Title IV (Registration of Deaths: Burial Permits); and Public Health Law Article 42 (Cadavers). Public Health Law 4140 requires that in the case of a death occurring from a disease which is designated in the State Sanitary Code as a communicable disease, no permit for the removal or other disposition of the body shall be issued by the registrar, except to a funeral director or undertaker licensed in accordance with Public Health Law Article 34 (Funeral Directing), under such conditions as may be prescribed in the State Sanitary Code.

C. DESTRUCTION OF PROPERTY

Authority: Public Health Law 2100 (2)(b) provides that every local board of health and every health officer may, subject to the provisions of the State Sanitary Code, prohibit and prevent all contact with or use of infected premises, places and things, and require, and if necessary, provide the means for their thorough purification and cleansing before contact may be resumed. According to an 1894 Opinion of the Attorney General, it was within the power of a local board of health to destroy clothing which had become infected with infectious or contagious disease germs.

D. LICENSING AND APPOINTMENT OF HEALTH PERSONNEL

1. Coroner, Coroner's Physician and Medical Examiner

Authority: Outside of New York City, County Law Article 17-A applies and describes their duties and manner of investigating deaths within their jurisdiction.

2. Physicians

Authority: Education Law Article 131 (Medicine); Education Law Article 131-A (definitions of professional misconduct applicable to physicians); Public Health Law 230 et seq.(Professional Medical Conduct); Public Health Law Article 33 (Controlled Substances)

3. Physician's Assistants

Authority: Education Law Article 131-B (Physician Assistants and Special Assistants); Education Law Article 131-A (definitions of professional misconduct applicable to

physician's assistants and special assistants); Public Health Law Article 33 (Controlled Substances)

4. Nurses

Authority: Education Law Article 139 (Nursing); Public Health Law Article 33 (Controlled Substances)

5. Pharmacists

Authority: Education Law Article 137 (Pharmacy); Public Health Law Article 33 (Controlled Substances)

6. Veterinarians

Authority: Education Law Article 135 (veterinary medicine)

7. Emergency Medical Technicians

Authority: Public Health Law Article 30 (Emergency Medical Services); 10 NYCRR Part 800 (State Emergency Medical Services Code)

8. Funeral Directors

Authority: Public Health Law Article 34 (Funeral Directing)

E. COLLECTION OF LABORATORY SPECIMENS: CHAIN OF CUSTODY

Physical evidence of an act of bioterrorism may take the form of a biohazard specimen. Whenever such a specimen is to be appropriately collected by members of the health service system or law enforcement agencies and transported to an appropriate laboratory for testing (e.g. Wadsworth Center for Laboratories and Research), material submitted as physical evidence must comply with policies that ensure its integrity and safe handling.

Authority: Executive Law 995-b(1) requires the Commission on Forensic Science to develop minimum standards for all forensic laboratories in New York State. See also 9 NYCRR Part 6190 (New York State Accreditation Program for Forensic Laboratories).

F. ACCESS TO AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

Authority: In addition to State law cited below, recently enacted Federal law must also be considered. See especially the Federal Health Insurance Portability and Accountability Act (HIPAA) and accompanying regulations at 45 CFR Pts. 160 & 162.

Hospitals licensed under Public Health Law Article 28 are required to ensure the confidentiality of patient records. Original medical records, information from or copies of records shall be released only to hospital staff involved in treating the patient and individuals as permitted by Federal and State laws. (10 NYCRR 405.10 (a)(5)).

Nursing homes must keep confidential all information contained in the residents' records except when release is required by the resident or by law. (10 NYCRR 415.22 (d)).

Confidential HIV related information is defined at Public Health Law 2780(7). No person who obtains such information in the course of providing any health or social

services pursuant to a release of confidential HIV related information may disclose or be compelled to disclose such information except as provided in Public Health Law 2782 and Article 27-F.

Release of patient medical records procedures are provided for in Public Health Law 17 upon the written request of the patient to an examining, consulting or treating physician or hospital.

Access to patient information is governed generally by Public Health Law 18.

V. ENFORCEMENT

Authority:

A. Criminal penalties — Public Health Law 12-b(2) provides that a person who willfully violates any provision of the Public Health Law or any regulation lawfully made or established by any public officer or board under authority of the Public Health Law, the punishment for violating which is not otherwise prescribed by the Public Health Law or any other law, is punishable by imprisonment not exceeding one year, or by a fine not exceeding \$2000 or by both.

B. Physician discipline — A physician may be charged via the disciplinary processes of Public Health Law 230 with professional misconduct pursuant to Education Law 6530(16) for a willful or grossly negligent failure to make a communicable disease report required under 10 NYCRR 2.10.

C. Civil penalties — Pursuant to Public Health Law 12 and 206, any person, including health facilities licensed under Public Health Law Article 28, who violates any provision of the Public Health Law or regulations made pursuant to it shall be liable for a civil penalty of not to exceed \$2000 for every such violation. A health facility licensed under Public Health Law Article 28 may subject its operating certificate to revocation, pursuant to Public Health Law 2806(1) for violation of the Public Health Law or applicable regulations, including communicable disease reporting requirements.

D. Obstruction or interference with State health inspector — No person shall interfere with or obstruct the inspection or examination of any occupant of any house, building, vessel or other premises by the State Commissioner of Health in the discharge of her official duties.(10 NYCRR 1.11).

Summary of Public Officers Law Coverage Regarding Volunteers

In April 2004, the Department of Health received an opinion from the Attorney General's (AG) office, which confirmed the application of P.O.L. § 17 to the NYS DOH Volunteer Database. Public Officers Law § 17 provides defense and indemnification to **employees** of the State for acts or omissions that occur while the employee was acting within the scope of his/her employment or official duties. The definition of employee includes those volunteers "expressly authorized to participate in a State sponsored volunteer program." Where injury occurs because of his or her intentional wrongdoing or recklessness, the volunteer would not be covered under § 17. When Public Officers Law § 17 applies, the State is not substituted as the defendant in the action; the volunteer is the named defendant. The State, through the Attorney General's office, provides a legal defense (attorney, assistance, etc.) for the employee. Should the injured individual prevail at trial, the judgment would be against the individual volunteer, but because the State provides indemnification, the State would pay the judgment and not the volunteer.

Although the AG's opinion references the database of volunteer physicians created in conjunction with the Medical Society of the State of New York (MSSNY), the opinion does not limit the application of P.O.L. § 17 to only those on the MSSNY list. Rather, the opinion addressed whether or not the volunteer database established by the State and its proposed use qualify as a "state sponsored volunteer program" triggering the application of P.O.L. § 17 to volunteers. This determination by the AG is not profession specific (i.e., limited to the physician members of MSSNY). Any professional¹ volunteer who is a part of the database and who is activated and authorized to act by NYSDOH during an emergency will be afforded the benefits provided by P.O.L. § 17². Those who act on their own and who are not on the volunteer database will **not** be offered the benefits of P.O.L. § 17. **The volunteers must be activated from the list and expressly authorized by the State to act in order to qualify for the statutory provisions.** In addition, this statutory liability coverage would be secondary to any malpractice or liability insurance coverage the volunteer may have³. Volunteers should read their policy or contact their carrier to determine whether or not the policy would cover actions taken while acting as a volunteer. Should volunteer activities be excluded from their policy, P.O.L. § 17 would be the volunteer's primary protection.

In the event there is a specific statute, e.g., § 304 of the Homeland Security Act, that provides protection for public health emergency volunteers, P.O.L. § 17 cannot be overlooked. For example, section 17 may be relevant if the volunteer is involved in the smallpox vaccination program. If § 304 of the Homeland Security Act* does apply and an injured vaccinee attempts to bring a suit against the individual volunteer in state court, the state, county or local government would provide an attorney for the volunteer. The attorney would be needed to argue the application of § 304 on behalf of the volunteer in order to get the state suit against him/her dismissed.

¹ Doctors, nurses, pharmacists, dentists, veterinarians, etc.

² P.O.L. § 17 protection will be available provided the requisite criteria are met (e.g., activated and deployed by NYSDOH, no intentional wrongdoing, timely notice to the AG's office).

³ The volunteer would still have to give the AG's office timely notice and meet the other procedural requirements for coverage in order to qualify for P.O.L. § 17 protection, which would be needed if the judgment exceeded their policy limit.

* Section 304 of the Homeland Security act provides immunity from liability for certain volunteers involved in the smallpox vaccination program. For more information, see separate document entitled Summary of Section 304 of the Homeland Security Act.

Use of Unlicensed Volunteers to Administer Influenza Vaccine

10 NYCRR § 2.56 authorizes individuals other than health care practitioners licensed under Title 8 of the Education Law to administer immunizations under certain conditions. It states:

2.56 Immunizations administered by individuals other than health care practitioners as permitted by their license under Title 8 of the Education Law.

- (a) During the course or as part of any public immunization program, individuals other than health care practitioners licensed under Title 8 of the Education Law may administer immunizations involving oral, intramuscular, subcutaneous or intradermal administration, including but not limited to immunizations, against rubella, polio, pertussis, measles, diphtheria and tetanus, when so authorized by the State Commissioner of Health or local health officer.
- (b) Before an individual may administer immunizations as provided in Subdivision of this section, he must have received training satisfactory to the State Commissioner of Health or local health officer to include indications, precautions and contraindications in the use of the agent or agents and techniques of administration.
- (c) The State Commissioner of Health or local health officer shall maintain a current list of all individuals whose training is satisfactory to him for the administration of immunizations under his direction.

If a state disaster emergency is declared, the Governor may by executive order, temporarily suspend the specific provisions of any statute, local law, ordinance, or orders, rules or regulations or any parts thereof, including professional licensure requirements, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster (see Executive Law § 29-a). Such orders may provide for suspension only under particular circumstances, and may provide for alteration or modification of the requirements of any statute, local law, ordinance, order, rule or regulation. If such an order is needed, the Director of the State Emergency Management Office should be contacted.

Proposed/Requested Waivers of State Laws and Regulations for Points of Dispensing (“PODs”)

The Governor is authorized, during a declared state emergency, to waive provisions of state law that would interfere with the response to the emergency. No such waiver is in effect prior to the declaration of an emergency, and no such waiver would automatically go into effect. Any waivers would have to be signed by the Governor after the declaration of the emergency and would be tailored to meet the needs of the specific circumstances of that emergency.

However, in planning for a state response to Pandemic Influenza, these proposed waivers have been identified as those that could assist in allowing efficient delivery of medications through PODs:

I. Licensure:

Waive the provision of the Education Law that limits the practice of pharmacy to licensed pharmacists, to allow licensed nurses to dispense medications in a POD.

Waive the provision of the Education Law that limits the execution of medical regimens prescribed by licensed physicians, dentists or other licensed and legally authorized health care providers to licensed nurses, to allow lay persons to administer antibiotics, antiviral medication and/or vaccinations.

Waive the provision of the Education Law that limits a dentist to the performance of a physical examination only in conjunction with the provision of dental services, so that dentists may perform physical examinations without dental services at a POD.

Waive the provision of the Education Law that limits a podiatrist to the performance of a physical examination only in conjunction with the provision of podiatric services, so that podiatrists may assist with such examinations at a POD.

II. Supervision of Others:

Waive the provision of the Education Law that limits a physician to the supervision of two physician assistants and establish a substitute standard.

Waive the provision in Title 8 of the NYCRR that limits the number of unlicensed individuals that licensed pharmacists may supervise to two, and establish a substitute standard.

III. Non-patient-specific Orders:

Waive the provisions of the Education law and Title 8 of the New York Codes, Rules and Regulations (“NYCRR”) which limits licensed physicians and certified nurse practitioners to prescribing and ordering non-patient-specific regimens to a registered professional nurse for administering immunizations and the emergency treatment of anaphylaxis only, to allow such orders for the emergency administration of antibiotics or antiviral medication for prophylactic or treatment purposes.

Waive the provision in Title 8 of the NYCRR that that requires a registered professional nurse administering immunization agents pursuant to a non-patient-specific order to be currently certified in cardiopulmonary resuscitation so that nurses whose certification has lapsed may administer immunizations at a POD.

IV. Medical Records:

Waive the provisions of the Education Law and Title 8 of the NYCRR that require a licensed pharmacist to keep a record for all prescriptions filled or refilled, so that this requirement would not apply in PODs.

Waive the provision in Title 8 of the NYCRR that requires licensed pharmacists to maintain a medication profile, so that this requirement would not apply in PODs.

V. Miscellaneous:

Waive the provisions of the Education Law and Title 8 of the NYCRR that require licensed pharmacists to wear an identifying badge containing the practitioner’s name and title.

Waive the provision in Title 8 of the NYCRR that requires a written offer to counsel the patient about the drug being dispensed and to provide a telephone number at which a licensed pharmacist or pharmacy intern may be readily reached, in order to expedite the dispensing process so that as many citizens as possible may receive the medications in the shortest amount of time.