

THE NEW MEXICO PUBLIC HEALTH EMERGENCY RESPONSE ACT (PHERA) AND OTHER EMERGENCY PREPAREDNESS LEGAL AUTHORITIES

The 2002 New Mexico Legislature passed Senate Joint Memorial 62 and House Joint Memorial 34, creating a tri-agency attorney work group from the New Mexico Department of Health (NMDOH), the New Mexico Attorney General's Office, and the New Mexico Department of Public Safety (NMDPS). The work group's task was to review existing New Mexico legal authorities related to civil and public health emergency preparedness and recommend legislation to the 2003 New Mexico Legislature to fill gaps in New Mexico emergency preparedness law. One important law that was developed through the work group and enacted in 2003 is the **Public Health Emergency Response Act (PHERA)**, Sections 12-10A-1, *et seq.*, NMSA 1978, now part of the New Mexico Emergency Powers Code created by the 2005 New Mexico Legislature (Laws 2005, Chapter 22).

The PHERA authorizes the Governor, in consultation with the NMDOH Secretary, to declare a "public health emergency" should public health emergency conditions be met as defined in the law. The Secretaries of NMDOH and NMDPS, and the Director of the Governor's Office of Homeland Security (GOHS) are then required to "coordinate a response to the public health emergency."

In addition to specifying the procedure for declaring a state of public health emergency, other key provisions of the PHERA include:

- The NMDOH Secretary, in coordination with the NMDPS Secretary and the GOHS Director, may utilize, secure, or evacuate health care facilities for public use and inspect, regulate or ration health care supplies.
- The NMDOH Secretary may control, restrict and regulate the allocation, sale, dispensing or distribution of health care supplies.
- The NMDOH Secretary may order involuntary isolation or quarantine of persons who have been exposed to or contracted a threatening communicable disease with a written *ex parte* order from the District Court. The NMDOH Secretary then coordinates with the NMDPS Secretary and GOHS Director to execute the *ex parte* order, followed by a petition filed in the District Court to extend the order if needed. A full due process court hearing is provided for the State to meet its burden of proof by clear and convincing evidence that a person should be quarantined or isolated to protect the health and safety of the public.
- Specific requirements for isolation or quarantine are identified, including:
 - isolation/quarantine shall be by the least restrictive means necessary, and isolated individuals shall be confined separately from quarantined individuals;
 - the health status of the isolated/quarantined person shall be monitored regularly;
 - the person's needs (food, shelter, sanitation, medication, physical and mental health care) must be met and methods of communication must be available so that he/she may communicate with family members, legal representatives, the media, etc.;
 - the isolated/quarantined person has the right to refuse treatment, testing, vaccination, etc.;
 - family members who sign consent forms have the right to enter an isolation/quarantine area; they then may be subject to isolation/quarantine.

- The NMDOH Secretary, the NMDPS Secretary, and the GOHS Director may enter into a memorandum of understanding with an Indian pueblo or tribal entity in order to “effectuate the purposes, procedures, and standards” of the PHERA.
- The NMDOH Secretary, the NMDPS Secretary, or the GOHS Director may enforce the provisions of the PHERA by imposing a civil administrative penalty (following a hearing).

The PHERA may be implemented separately or concurrently with the **State Civil Emergency Preparedness Act** (Sections 12-10-1, et seq., NMSA 1978). That Act identifies a civil emergency as any “man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state.” It specifies emergency response authority within NMDPS, and authorizes the creation of local offices of civil emergency preparedness in the political subdivisions of the State. Specifically, the State Civil Emergency Preparedness Act vests responsibility for civil emergency preparedness with the governing bodies of the political subdivisions, and authorizes these subdivisions to create a local office of civil emergency preparedness and appoint a local emergency manager. It also allows political subdivisions to enter into mutual aid agreements for reciprocal aid and assistance. The process of obtaining reciprocal aid and assistance has been tremendously enhanced by the passage of the Intrastate Mutual Aid Act (see below).

Another key provision of the State Civil Emergency Preparedness Act allows the Governor, the NMDPS representative, and local government to “utilize...the services, equipment, supplies and facilities of existing departments, offices, and agencies of the state and of the political subdivisions thereof to the maximum extent practicable.”

The Emergency Licensing Act (Sections 12-10-10.1, et seq., NMSA 1978), allows out-of-state license holders to be credentialed, if approved by the Secretaries of NMDOH or NMDPS, to render aid and specifies that such a person “shall be considered a public employee for the purposes of the Tort Claims Act...”

In addition to the PHERA and the State Civil Emergency Preparedness Act, other federal laws, state statutes, and state rules identify (or limit) the powers of the New Mexico state government in a public health emergency. These include:

- The **Intrastate Mutual Aid Act** (IMAA), passed in the 2006 New Mexico State Legislature with an emergency clause for immediate enactment, creates an 11 member Intrastate Mutual Aid Committee (IMAC). The IMAC will provide oversight of the system and will develop and disseminate comprehensive guidelines, procedures, and recordkeeping for requesting and providing intrastate mutual aid, and for reimbursing the expenses of member jurisdictions. The State and every political subdivision is a member. However, a member jurisdiction other than the State may elect not to participate in or to withdraw from the system by passing a local resolution or ordinance. An Indian nation, tribe or pueblo located within the boundaries of the State may become a member by passing a tribal resolution.
- The federal **Robert T. Stafford Disaster Relief and Emergency Assistance Act**, Public Law 93-288, as amended (the Stafford Act) establishes the process for state and local governments to request and obtain a Presidential disaster declaration, defines the type and scope of assistance available, and sets the conditions for obtaining that assistance.

- Other New Mexico statutes related to non-emergency public health may be relevant to a pre-emergency and emergency response, including the Public Health Act (Sections 24-1-1, et seq., NMSA 1978), the Emergency Medical Services Act (Sections 24-10B-1, et seq., NMSA 1978), and sections on Medical Investigations (Sections 24-11-1, et seq., NMSA 1978) and Disposition of Dead Bodies, Sections 24-12-1, et seq., NMSA 1978).
- The **Public Health Act** spells out the legal authority given to NMDOH prior to the declaration of a public health emergency, including the authority to investigate and control the causes of disease, especially epidemics; establish and enforce isolation and quarantine; close any public place and forbid gatherings when necessary to protect public health; maintain and enforce rules for the control of communicable diseases deemed dangerous to the public health; maintain and enforce rules for immunization against diseases deemed dangerous to the public health; and inspect premises or vehicles to ascertain the existence of conditions dangerous to public health or safety.
- NMDOH Rule 7.4.3 NMAC, **Control of Disease and Conditions of Public Health Significance**, requires NMDOH to issue a list of “notifiable conditions” and requires health care professionals to report those conditions. The Rule also gives the responsibility for the protection of public health to NMDOH and states, “The department of health may take such measures on the advice of its medical officer or officers as are deemed necessary and proper for the protection of the public health,” including imposition of isolation or quarantine.

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