
Wisconsin Legislative Council

INFORMATION MEMORANDUM



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AUTHORITY OF PUBLIC HEALTH OFFICIALS DURING A PUBLIC HEALTH EMERGENCY

This information memorandum provides a general overview of the authority of the Governor and local governments to declare states of emergency and of the authority of state and local health officials to respond to public health emergencies.¹

AUTHORITY TO DECLARE A STATE OF EMERGENCY

Governor's Authority

If the Governor determines that a public health emergency exists, he or she may issue an executive order declaring a state of emergency related to public health for the state or any portion of the state and may designate the Department of Health Services (DHS) as the lead state agency to respond to that emergency. On March 12, 2020, Governor Evers declared a public health emergency in response to the COVID-19 pandemic and designated DHS as the lead agency to respond to the emergency in Executive Order #72.

A state of emergency declared by the Governor may not exceed 60 days, except that it may be extended by joint resolution of the Legislature. The executive order may also be revoked at any time by the Governor by executive order or by the Legislature by joint resolution. [s. 323.10, Stats.]

During a declared state of emergency, the Governor may do any of the following:

- Issue such orders as he or she deems necessary for the security of persons and property.
- Suspend the provisions of any administrative rule if the strict compliance with that rule would prevent, hinder, or delay necessary actions to respond to the disaster.
- Declare priority of emergency management contracts over other contracts, allocate materials and facilities in his or her discretion, and take, use, and destroy, in the name of the state, private property for emergency management purposes.
- Contract on behalf of the state with any person to provide, on a cost basis, equipment and services to be used to respond to a disaster or the imminent threat of a disaster.
- Waive fees required by the state to replace permits, licenses, approvals, or other authorizations that were lost or destroyed in connection with the state of emergency.

¹ Note that this memorandum does not describe all of the state and local powers that may apply during a state of emergency. For example, the Department of Military Affairs and Adjutant General can also play an important role in emergency response. This memorandum also does not describe the ongoing responsibilities of state and local actors with regard to emergency planning.

- Order into the state active duty members of the National Guard.

[ss. 321.39 (1) (a) 3. and 323.12 (4), Stats.]

The Governor may also delegate such authority as is necessary to the administrator of the Division of Emergency Management within the Department of Military Affairs. [s. 323.12 (3), Stats.] The state's Adjutant General is generally involved in emergency management and assists the Governor during a state of emergency as well.

The statutes provide that whoever intentionally fails to comply with an order issued by an agent of the state or of a local unit of government who is engaged in emergency management activities during a state of emergency is subject to a forfeiture of not more than \$200. [s. 323.28, Stats.]

In addition, by declaring a state of emergency, the Governor activates state laws that provide special rules for emergency volunteer health care practitioners who, while the state of emergency is in place, are considered employees of the state for worker's compensation benefits. [ch. 257, Stats.]

Local Government Authority

The governing body of any county, city, village, or town may declare, by ordinance or resolution, an emergency existing within the local unit of government whenever conditions arise by reason of a riot or civil commotion, a disaster, or an imminent threat of disaster that impairs transportation, food or fuel supplies, medical care, fire, health, or police protection, or other critical systems of the local unit of government. The length of the emergency must be limited by the ordinance or resolution to the time during which the emergency conditions exist or are likely to exist. [s. 323.11, Stats.]

A local government's authority to order a state of emergency includes the general authority to order, by ordinance or resolution, whatever is necessary and expedient for the health, safety, protection, and welfare of persons and property within the local government in the emergency. It also includes the power to bar, restrict, or remove all unnecessary traffic, both vehicular and pedestrian, from the highways. If the local governing body is unable to meet because of the emergency conditions, the local chief executive officer may declare a state of emergency and exercise the local emergency powers by proclamation. [s. 323.14 (4), Stats.]

If a local government declares a state of emergency, it may also choose to use volunteer health care practitioners under the provisions of ch. 257, Stats. If it chooses to do so, it must notify DHS of its intent to do so as soon as possible. [s. 323.14 (3) (a), Stats.]

A local government also has certain powers to act during a state of emergency declared by the Governor, even if the local government does not also declare a state of emergency. For example, during a state of emergency declared by the Governor, a local government may employ personnel, facilities, and other resources consistent with the local emergency management plan. The local head of emergency management may also contract with any person to provide equipment and services on a cost basis to be used to respond to a disaster, or the imminent threat of a disaster. [s. 323.14 (3) and (4), Stats.]

AUTHORITY OF STATE AND LOCAL HEALTH OFFICIALS

DHS

When the Governor declares a state of emergency related to public health and designates DHS as the lead agency to respond to the emergency, DHS acts as the public health authority during the period of the state of emergency. During the period of the state of emergency, the Secretary of Health Services may designate a local health department as a DHS agent and confer upon the local health department, acting under the agency, the powers and duties of a public health authority.

As the public health authority, DHS may purchase, store, or distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies that DHS determines are advisable to control a public health emergency. [s. 250.042, Stats.]

In addition, while the state of emergency is in place, DHS may require compulsory vaccinations, except in a case where the vaccination is reasonably likely to lead to serious harm to the individual or where the individual refuses for reasons of religion or conscience. [s. 252.041, Stats.]

[General Authority to Control Communicable Diseases](#)

DHS also has general authority to control communicable diseases, regardless of whether a state of emergency has been declared. Pursuant to s. 252.02, Stats., DHS may do any of the following:

- Authorize and implement all emergency measures necessary to control communicable diseases.
- Close schools and forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics.
- Establish systems of disease surveillance and inspection to ascertain the presence of any communicable disease.
- If a special inspection warrant is issued, send an agent to enter and inspect any building, vessel, or conveyance and to remove any person affected by a communicable disease. For this purpose, the agent may require a vehicle to stop at any place, or may require a railway car to stop at any station or sidetrack, for such time as may be necessary.
- In an emergency, provide those sick with a communicable disease with medical aid and temporary hospital accommodation.
- Promulgate and enforce rules or issue orders for any of the following purposes:
 - To guard against the introduction of any communicable disease into the state;
 - For the control and suppression of communicable diseases;
 - For the quarantine and disinfection of persons, localities, and things infected or suspected of being infected by a communicable disease; and
 - For the sanitary care of jails, state prisons, mental health institutions, schools, and public buildings and connected premises.
- Issue orders for any city, village, or county by service upon the local health officer. If the public officer or employee in charge fails to comply with a DHS rule or order, DHS may appoint its own agent to execute its rules or orders.

Generally, a person who willfully violates or obstructs the execution of one of the above requirements may be subject to imprisonment for not more than 30 days or a fine of not more than \$500 or both. [s. 252.25, Stats.]

In addition, in the event of an emergency condition that imminently threatens the health or safety of patients of a hospital, DHS may suspend new admissions to all or a part of the hospital until such time as DHS decides that the hospital has removed or corrected the causes or deficiencies creating the emergency. [s. 50.39 (5) (a), Stats.] DHS may also grant a variance to or a waiver from any of the requirements for hospitals under state law if it determines that doing so is necessary to protect the public health, safety, or welfare, or to support the efficient and economic operation of the hospital. [ss. 50.36 (6m) and 323.19 (1), Stats.]

Isolation and Quarantine

DHS, or a local health officer acting on behalf of DHS, may require isolation of a patient, quarantine of contacts, concurrent and terminal disinfection, or modified forms of these procedures as may be necessary. [s. 252.06, Stats.] DHS may order quarantines of persons, localities, or things infected or suspected of being infected with a communicable disease. [s. 252.02 (4), Stats.]

Specifically, if an official, such as the state health officer, is notified that a person is known to have or is suspected of having a contagious medical condition that poses a threat to others,² the official may direct the person to do any of the following:

- Participate in a designated education or treatment program.
- Undergo testing and provide verification of his or her status to designated health officials.
- Cease and desist in conduct or employment that constitutes a threat to others.
- Reside part- or full-time in an isolated or segregated setting that decreases the danger of transmission of the communicable disease.
- Be placed in an appropriate institutional treatment facility until the person has become noninfectious.

[s. DHS 145.06 (4), Wis. Adm. Code.]

In addition, officials may direct persons who own or supervise real or physical property that presents a threat of transmission to do what is reasonable and necessary to abate the threat of transmission. [s. DHS 145.06 (6), Wis. Adm. Code.]

Officials may also employ quarantine guards, who have police powers and are authorized to use all necessary means to enforce applicable state laws and orders. During a declared state of emergency, no person other than those authorized by DHS or its agent may enter an isolation or quarantine premises. A person who violates this requirement may be subject to isolation or quarantine and is subject to a fine of up to \$10,000 or imprisonment of up to nine months, or both. [s. 252.06 (4) and (5), Stats.]

² The criteria used to determine whether a person poses a threat to others are outlined in s. DHS 145.06 (2) and (3), Wis. Adm. Code. The local health officer may also be required to consult with a physician. [s. 252.06 (3), Stats.]

Additional Express Authority Under Executive Order #72

Executive Order #72 also expressly authorizes DHS to do all of the following:

- Take all necessary and appropriate measures to prevent and respond to incidents of COVID-19 in the state.
- Suspend the provisions of any administrative rule, if the DHS secretary determines that compliance with that rule would prevent, hinder, or delay necessary actions to respond to the emergency and increase the health threat.
- Assist “as appropriate” in the state’s ongoing response to the public health emergency.

Local Health Officers

As described above, the authority of local health officers to respond to public health issues overlaps to some extent with DHS’s authority, and DHS may also delegate broad responsibilities to local health officers during a state of emergency. In addition to the authority described above, state statutes also specify that whenever a communicable disease appears in a community, local health officers are required to “promptly take all measures necessary to prevent, suppress and control communicable diseases.” Local health officers also have general authority to “do what is reasonable and necessary for the prevention and suppression of disease” and may “forbid public gatherings when deemed necessary to control outbreaks or epidemics.” They may also inspect schools and other public buildings within their jurisdiction as needed to determine whether the buildings are kept in a sanitary condition. [s. 252.03 (1) and (2), Stats.]

DHS’s rules require local health officers to follow the methods of control set forth in official reports of the American Public Health Association and the American Academy of Pediatrics, unless specified otherwise by the state epidemiologist. Any specific medical treatment must be prescribed by a physician or an advanced practice nurse prescriber. [s. DHS 145.05 (2), Wis. Adm. Code.]

The local health officers must report to DHS and the appropriate governing body about the progress of any communicable disease and must describe the local efforts to control the disease. If the local authorities fail to enforce the communicable disease statutes and rules, DHS is required to take charge. [s. 252.03, Stats.]

Generally, a person who willfully violates or obstructs the execution of one of these requirements may be subject to imprisonment for not more than 30 days or a fine of not more than \$500, or both. [s. 252.25, Stats.]

This memorandum was prepared by Andrea Brauer, on March 24, 2020.