



State and Local Authority to Control Communicable Diseases

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This issue brief outlines the authority of the Governor and other state and local officials to address the control and suppression of communicable diseases.

THE GOVERNOR

The Governor may issue an executive order declaring a state of emergency related to public health. All of the following apply to this authority:

- An order may not exceed 60 days. [s. [323.10](#), Stats.]
- The Legislature may revoke or extend a state of emergency by joint resolution. [*Id.*]
- The Governor may designate the Department of Health Services (DHS) as the lead state agency to respond to an emergency. [*Id.*]
- The Governor lacks statutory authority to issue multiple declarations of emergency based on the same condition that enabled the initial declaration. [*Fabick v. Evers*, 2021 WI 28.¹]
- During a state of emergency, the Governor may take a number of actions, including activating the National Guard, and suspending an administrative rule if strict compliance would prevent, hinder, or delay response. [ss. [321.39\(1\)\(a\) 3.](#) and [323.12\(3\)](#) and [\(4\)](#), Stats.]

THE DEPARTMENT OF HEALTH SERVICES

DHS has general authority to control communicable diseases, regardless of whether a state of emergency has been declared.² DHS may exercise its authority in accordance with all of the following:

- DHS may authorize and implement all emergency measures necessary to control communicable diseases. [s. [252.02\(6\)](#), Stats.]
- To control outbreaks and epidemics, DHS may close schools and forbid public gatherings. [s. [252.02\(3\)](#), Stats.]
- DHS may issue orders for the control and suppression of communicable diseases. An order supersedes conflicting or less stringent local regulations. [s. [252.02\(4\)](#), Stats.]
- To be valid, a general order of general application must be promulgated as an administrative rule, except with respect to a provision to close schools. The authority to implement “all emergency measures” is not an open-ended grant of powers. [*Legislature v. Palm*, 2020 WI 42.³] Likewise, a building capacity limit must be promulgated as an administrative rule. [*Tavern League v. Palm*, 2021 WI 33.⁴]
- During a declared state of emergency, DHS may isolate a patient or quarantine individual contacts. Also, during a declared state of emergency, DHS may order an individual to receive a vaccination, unless the vaccination is reasonably likely to lead to serious harm to the individual or the individual refuses the vaccination for reasons of religion or conscience. [ss. [252.041](#) and [252.06](#), Stats.; and s. [DHS 145.06](#), Wis. Adm. Code.]

LOCAL UNIT OF GOVERNMENT

A city, village, town, or county may declare an emergency by ordinance or resolution, in accordance with all of the following:

- The period of the emergency is limited to the time during which the emergency conditions exist or are likely to exist. [s. [323.11](#), Stats.]
- During a period of emergency, the local governmental unit may take a number of actions, including ordering, by ordinance or resolution, whatever is necessary and expedient for health, safety, protection, and welfare. [s. [323.14\(3\)](#) and [\(4\)](#), Stats.]

LOCAL HEALTH OFFICER

A local health officer has general authority to control communicable diseases, regardless of whether a state of emergency has been declared. A local health officer may exercise authority in accordance with all of the following:

- A local health officer must promptly take all measures necessary to prevent, suppress, and control communicable diseases. [s. [252.03\(1\)](#), Stats.]
- A local health officer may do what is reasonable and necessary for the prevention and suppression of disease and may forbid public gatherings when necessary to control outbreaks or epidemics. [s. [252.03\(2\)](#), Stats.]
- A local health officer may take the actions in the two previous bullet points by issuing a public health order. [*Becker v. Dane County*, 2022 WI 63.]
- A mandate to close any businesses may not exceed 30 days and may not distinguish between essential and nonessential businesses. The governing body of a city, village, town, or county may extend the order by up to 30 days. [s. [252.03\(2j\)](#), created by [2023 Wisconsin Act 12](#).]
- A local health officer may not close schools or restrict or prohibit in-person instruction. [*James v. Heinrich*, 2021 WI 58.]
- A local health officer must immediately quarantine, isolate, require restrictions, or take other measures to control a communicable disease in the manner specified by DHS by rule. [s. [252.06\(3\)](#), Stats.; and s. [DHS 145.06](#), Wis. Adm. Code.]
- A local health officer must follow the methods of control set out in official reports of the American Public Health Association and the American Academy of Pediatrics, unless specified otherwise by the state epidemiologist. The methods of control typically adhere to Centers for Disease Control and Prevention (CDC) recommendations. [s. [DHS 145.05\(2\)](#), Wis. Adm. Code.]

SCHOOL BOARD

A school board has broad authority to manage the affairs of schools within the district and may set policies for the health and safety of students and staff on school property. For example, a school board may establish a policy regarding the use of face coverings or masks and a protocol in the event of disease exposure. A policy or protocol would be subject to any state orders or administrative rules or local orders as outlined above. [ss. [118.001](#), [120.12\(1\)](#) and [\(2\)](#), and [120.13\(1\)\(a\)](#), Stats.]

¹ For a brief discussion of the decision, see Legislative Council, *Fabick v. Evers*, Issue Brief (April 2021).

² In addition to the actions outlined above, DHS is statutorily obligated to oversee a student immunization program as part of the state's efforts to eliminate certain diseases. For a brief description of those requirements, see Legislative Council, *Student Immunization Program*, Issue Brief (January 2022).

³ For a brief discussion of the decision, see Legislative Council, *Wisconsin Legislature v. Palm*, Issue Brief (May 2020).

⁴ For a brief discussion of the decision, see Legislative Council, *Capacity Limits After Tavern League v. Palm*, Issue Brief (April 2021).