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TO: State Administration and Veterans' Affairs Interim Committee

FROM: Greg Petesch

RE: Model State Emergency Health Powers Act

January 7, 2002

The Committee has asked for a comparison of the Model State Emergency Health Powers Act (Model Act) to Montana law. This memorandum will summarize the provisions of the December 21, 2001, draft of the Model Act and provide a comparison with Montana statutes. The Model Act was prepared under contract for the federal Centers for Disease Control and Prevention in response to the new and emerging dangers after September 11, 2001. The Model Act was prepared by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities in collaboration with the National Governors Association, the National Conference of State Legislatures, the National Association of County and City Health Officials, the Association of State and Territorial Health Officials, and the National Association of Attorneys General. The Model Act is intended to provide states with strong public health powers to rapidly detect and effectively respond to bioterrorism and other emergency health threats.

The Model Act is divided into eight articles with specific sections comprising the articles. The articles would be similar to the parts within a chapter of the Montana Code Annotated. Montana statutes corresponding to the Model Act are summarized in italics following the summary of the Model Act provision. The December 21, 2001, draft of the Model Act and the appropriate Montana Code Annotated sections are attached as appendices.

Article I . Findings, Purpose, and Definitions. Article I contains the legislative findings

upon which the Model Act is premised and provides a purpose statement for the Model Act.

The purposes of the Model Act are to:

- (1) require the development of a comprehensive plan to provide for a coordinated, appropriate response in the event of a public health emergency;
- (2) authorize the reporting and collection of data and records, the management of property, the protection of persons, and access to communications;
- (3) facilitate the early detection of a health emergency and allow for immediate investigation of such an emergency by granting access to individuals' health information under specified circumstances;
- (4) grant state and local officials the authority to use and appropriate property as necessary for the care, treatment, vaccination, and housing of patients and to destroy contaminated facilities or materials;
- (5) grant state and local officials the authority to provide care, treatment, and vaccination to persons who are ill or who have been exposed to contagious diseases and to separate affected individuals from the population at large to interrupt disease transmission;
- (6) ensure that the needs of infected or exposed persons are properly addressed to the fullest extent possible, given the primary goal of controlling serious health threats; and
- (7) provide state and local officials with the ability to prevent, detect, manage, and contain emergency health threats without unduly interfering with civil rights and liberties.

Section 10-3-101, MCA, declares the policy of the state concerning the threat of disasters and emergencies. The section states the authority necessary to ensure timely reaction and preparation to protect the public peace, health, and safety and to preserve the lives and property of the people of the state.

The Article contains defined terms that apply throughout the Model Act. The defined terms are listed below, and certain Model Act definitions are included for comparative purposes. The Model Act defines the following terms:

- (1) "Bioterrorism" is the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population;
- (2) "Chain of custody";
- (3) "Contagious disease" is an infectious disease that can be transmitted from person to person;
- (4) "Health care facility";
- (5) "Health care provider";
- (6) "Infectious disease" is a disease caused by a living organism or other pathogen, including a fungus, bacillus, parasite, protozoan, or virus. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.

(7) "Infectious waste" is:

(a) "biological waste" which includes blood and blood products, excretions, exudates, secretions, suctioning and other body fluids, and waste materials saturated with blood or body fluids;

(b) "cultures and stocks" which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures, wastes from production of biologicals and serums, and discarded live and attenuated vaccines;

(c) "pathological waste" which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, necropsy or autopsy and laboratory procedures, and animal carcasses exposed to pathogens in research and the bedding and other waste from those animals, but does not include teeth or formaldehyde or other preservative agents; and

(d) "sharps" which includes needles, I.V. tubing with needles attached, scalpel blades, lancets, breakable glass tubes, and syringes that have been removed from their original sterile containers;

(8) "Isolation" is the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from nonisolated individuals, to prevent or limit the transmission of the disease to nonisolated individuals;

(9) "Mental health support personnel";

(10) "Organized militia";

(11) "Protected health information" is any information, whether oral, written, electronic, visual, or any other form, that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and that reveals the identity of the individual whose health care is the subject of the information, or where there is a reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual;

(12) "Public health authority";

(13) "Public health emergency" is an occurrence of imminent threat of an illness or health condition that:

(a) is believed to be caused by any of the following:

(i) bioterrorism;

(ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin;

(iii) [a natural disaster;]

(iv) [a chemical attack or accidental release; or]

(v) [a nuclear attack or accident]; and

(b) poses a high probability of any of the following harms:

(i) a large number of deaths in the affected population;

(ii) a large number of serious or long-term disabilities in the affected population; or

(iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population;

(14) "Public safety authority";

(15) "Quarantine" is the physical separation and confinement of an individual or

groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit the transmission of the disease to non-quarantined individuals;

(16) "Specimens";

(17) "Tests"; and

(18) "Trial court".

Section 10-3-103, MCA, concerning disaster and emergency services contains the following definitions:

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, or accidents involving radiation byproducts or other hazardous materials.

(2) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(3) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(4) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency, but the term does not include a state of emergency or disaster declared by the Governor pursuant to 10-3-302 or 10-3-303, MCA.

Section 50-1-101, MCA, defines a "communicable disease" as a disease designated as communicable by the Department of Public Health and Human Services (DPHHS). ARM 16.28.101 defines a "communicable disease" as an illness due to a specific infectious agent or its toxic products, which results from transmission of that agent or its products to a susceptible host, directly or indirectly. ARM 16.28.202 enumerates the communicable diseases and conditions that are reportable. The rule also incorporates by reference, the Control of Communicable Diseases Manual of the American Public Health Association, 17th Edition, 2000.

Section 50-16-504, MCA, part of the Uniform Health Care Information Act, defines "health care information" as any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

Section 50-16-602, MCA, concerning health care information possessed by the government, defines "health care information" as information, whether oral or recorded in any form or

medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and that relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

Section 50-16-701, MCA, concerning the reporting of exposure to infectious disease, defines an "infectious disease" as human immunodeficiency virus infection, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and any other disease capable of being transmitted through an exposure that has been designated by department rule. An "airborne infectious disease" is defined as an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

Section 75-10-1003, MCA, concerning the management of infectious waste, defines "infectious waste" as waste capable of producing infectious disease. Infectious waste includes but is not limited to:

- (1) cultures and stocks of infectious agents and associated biologicals;*
- (2) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;*
- (3) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and*
- (4) sharps that have been used in patient care, medical research, or industrial laboratories.*

Section 81-2-102, MCA, authorizes the Department of Livestock to adopt rules and orders that it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock in this state and to adopt rules and orders necessary or proper governing inspections and tests of livestock and alternative livestock intended for importation into this state before it may be imported into this state. Section 81-2-103, MCA, requires the Department of Livestock to adopt and enforce rules for the inspection and tuberculin testing of dairy cattle or other animals and for the inspection, testing, treatment, or disposition of livestock or other animals affected with or that may have been exposed to infectious, contagious, communicable, or dangerous disease and for the quarantines provided for in Title 81, chapter 2, or 81-20-101, MCA.

Article II. Planning for a Public Health Emergency. This article requires the Governor to appoint a Public Health Emergency Planning Commission and requires the Commission to adopt a public health emergency plan. The plan is required to address:

- (1) notifying and communicating with the population during a state of public health emergency;*
- (2) central coordination of resources, manpower, and services, including coordination of responses by state, local, tribal, and federal agencies;*
- (3) the location, procurement, storage, transportation, maintenance, and distribution of essential materials;*
- (4) compliance with statutory reporting requirements;*

(5) the continued, effective operation of the judicial system including, if necessary, the identification and training of personnel to serve as emergency judges regarding matters of isolation and quarantine;

(6) the method of evacuating populations, and housing and feeding the evacuated populations;

(7) the identification and training of health care providers to diagnose and treat persons with infectious diseases;

(8) the vaccination of persons;

(9) the treatment of persons who have been exposed to or who are infected with diseases or health conditions that may be the cause of a public health emergency;

(10) the safe disposal of infectious wastes and human remains;

(11) the safe and effective control of persons isolated, quarantined, vaccinated, tested, or treated during a state of public health emergency;

(12) tracking the source and outcomes of infected persons;

(13) ensuring that each city and county within the state identifies the following:

(a) sites where persons can be isolated or quarantined in compliance with the conditions and principles for isolation or quarantine;

(b) sites where medical supplies, food, and other essentials can be distributed to the population;

(c) sites where public health and emergency workers can be housed and fed; and

(d) routes and means of transportation of people and materials;

(14) cultural norms, values, religious principles, and traditions that may be relevant; and

(15) other measures necessary to carry out the purposes of the Model Act.

Section 10-3-105, MCA, provides that the Division of Disaster and Emergency Services within the Department of Military Affairs is required to prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program must be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, and Canada to the fullest extent possible. The Division is also required to:

(1) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(2) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(3) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(4) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program because of limitations of funding, personnel, or other reasons;

(5) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of Title 10, chapter 3, parts 1 through 4, MCA;

(6) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(7) *develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;*

(8) *plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;*

(9) *institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of an actual incident, emergency, or disaster, to ensure the availability of adequately trained and equipped personnel in time of an incident, emergency, or disaster;*

(10) *direct emergency response and disaster preparation activities as authorized by the Governor;*

(11) *direct disaster response and recovery activities as authorized by the Governor;*

(12) *prepare, for issuance by the Governor, executive orders or proclamations as necessary or appropriate in coping with incidents, emergencies, and disasters;*

(13) *maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of Title 10, chapter 3, parts 1 through 4, MCA, and in implementing programs for disaster prevention, preparation, response, and recovery; and*

(14) *assume any additional authority, duties, and responsibilities authorized by Title 10, chapter 3, parts 1 through 4, MCA, as may be prescribed by the Governor.*

The plan is required to be distributed to the public, and the Commission is required to conduct an annual review of the plan.

Article III. Detection and Tracking of Potential Health Care Emergencies. This article is intended to facilitate the reporting and tracking of a potential health emergency. The article requires health care providers, coroners, and medical examiners to report illnesses or health conditions that may be potential causes of a public health emergency. Pharmacists are required to report unusual or increased rates of prescriptions that may be related to a public health emergency. Veterinarians, livestock owners, and veterinary laboratories are required to report animal diseases that may be potential causes of a public health emergency.

Section 37-2-301, MCA, requires physicians or other practitioners of the healing arts to report the treatment or examination of a person believed to have a communicable disease or disease declared reportable by DPHHS. Section 37-26-303, MCA, applies the requirements for the reporting of communicable diseases to naturopathic physicians. Section 37-30-412, MCA, provides that the owner or manager of a barbershop is required to report to the Department of Labor and Industry the name of a person practicing barbering in the barbershop who has a communicable disease.

Section 50-1-202, MCA, requires DPHHS to adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases. Section 50-2-118, MCA, requires local health officers to report communicable diseases to DPHHS each week

on forms provided by DPHHS. Section 50-16-702, MCA, requires emergency services providers who are exposed to an infectious disease in an official capacity to request a representative to report the exposure to the health care facility to which the provider transports the patient. If the exposure is to an "airborne infectious disease", the health care facility must inform DPHHS.

Section 81-2-107, MCA, requires any person, including the owner or custodian, who has reason to suspect the existence of a dangerous, infectious, contagious, or communicable disease in livestock or the presence of animals exposed to the disease in this state to immediately give notice to the Department of Livestock.

The public health authority is required to ascertain the existence of cases of an illness or health condition that may be potential causes of a public health emergency. The authority is required to investigate the cases for sources of infection and to ensure that they are subject to proper control measures. The authority is required to identify exposed individuals and close, evacuate, or decontaminate any facility or decontaminate or destroy material when the authority reasonably suspects that the facility or material may endanger the public health. The public safety authority or any other government or local government agency that learns of a reportable illness or condition is required to immediately notify the public health authority. The public health authority is required to notify public health and safety authorities whenever it learns of a reportable illness or health condition, unusual cluster, or suspicious event that it believes could be caused by bioterrorism. The sharing of information is restricted to information necessary for the treatment, control, investigation, and prevention of a public health emergency.

Section 7-3-4463, MCA, provides that the city director of public welfare shall enforce all laws, ordinances, and regulations relative to the preservation and promotion of the public health. In time of epidemic or threatened epidemic, the director may enforce quarantine regulations that are appropriate to the emergency.

Section 7-4-4306, MCA, provides that, if authorized by ordinance, a mayor has authority over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations of the city or town. The county commissioners are required to approve the ordinance.

Section 50-2-116, MCA, provides that local boards of health are required to guard against the introduction of communicable disease. Local boards of health may:

- (1) quarantine persons who have communicable diseases;*
- (2) require isolation of persons or things that are infected with communicable diseases;*
- (3) furnish treatment for persons who have communicable diseases;*
- (4) prohibit the use of places that are infected with communicable diseases;*
- (5) require and provide means for disinfecting places that are infected with communicable diseases; and*
- (6) adopt rules that do not conflict with rules adopted by the department for the control of communicable diseases.*

Sections 50-16-529 and 50-16-530, MCA, of the Uniform Health Care Information Act, provide for the disclosure of health care information without a patient's authorization to avoid an imminent danger to the health or safety of others or when the disclosure is to governmental health authorities to the extent necessary to protect the public health.

Section 50-16-603, MCA, allows the release of health care information held by the government to another state or local public health agency, including those in other states, whenever necessary to undertake public health efforts to prevent or interrupt the transmission of a communicable disease.

Section 81-2-101, MCA, provides that an agent or officer of the Department of Livestock may enter anywhere where there may be found livestock affected with or that has been exposed to or that the officer has reason to believe is either affected with or has been exposed to an infectious, contagious, communicable, or dangerous disease or disease-carrying insects.

Article IV. Declaring a State of Public Health Emergency. This article authorizes the Governor to declare a state of public health emergency. The declaration must specify:

- (1) the nature of the public health emergency;
- (2) the political subdivisions or geographic areas subject to the declaration;
- (3) the conditions that have brought about the public health emergency;
- (4) the duration of the state of the public health emergency, if less than 30 days; and
- (5) the primary public health authority responding to the emergency.

Section 10-3-104, MCA, provides that the Governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that have brought about the declaration or that make possible termination of the state of emergency or disaster.

The effect of a declaration is to implement the disaster response aspects of disaster emergency plans drawn up by the state and local governments and to authorize the use of necessary supplies, equipment, material, and facilities. The Governor may:

- (1) suspend the provisions of regulatory statutes or rules proscribing procedures for conducting state business if necessary for a prompt response;
- (2) use all available resources of the state that are reasonably necessary to respond to the public health emergency;
- (3) transfer the direction, personnel, or functions of state departments and agencies in order to perform or facilitate response and recovery programs regarding the public health emergency;
- (4) mobilize all or any part of the organized militia into service of the state;
- (5) provide aid to and seek aid from other states in accordance with any interstate emergency compact made with this state; and
- (6) seek aid from the federal government in accordance with federal programs or requirements.

Section 10-3-302, MCA, provides that the proclamation of a state of emergency activates the emergency response and disaster preparation aspects of the state disaster and emergency plan and program and authorizes the use of any forces to which the plan applies. The proclamation also authorizes the distribution and use of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be available. Section 10-3-303, MCA, provides for the same effect for a proclamation of a state of disaster. Section 10-3-104, MCA, authorizes the Governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster. Section 10-3-312, MCA, statutorily appropriates up to \$12 million each biennium for disasters and emergencies. Section 10-3-305, MCA, provides that the Governor is the commander-in-chief of the militia and of other forces available for incident, emergency, or disaster duty. All agencies of the state are directed to cooperate and extend their services and facilities to the Governor. Section 10-3-207, MCA, the Interstate Mutual Aid Compact, authorizes the receipt of assistance from participating states. Section 10-3-1001, MCA, the Emergency Management Assistance Compact, authorizes the receipt of personnel, equipment, materials, supplies, and services from participating states. Section 10-3-203, MCA, authorizes the acceptance of federal services, equipment, supplies, materials, and funds.

The public health authority is required to coordinate all matters pertaining to the state's public health emergency response. The public health authority has primary jurisdiction for:

- (1) planning and executing public health emergency assessment, mitigation, preparedness response, and recovery for the state;
- (2) coordinating public health emergency response between state and local authorities;
- (3) collaborating with relevant federal government authorities, elected officials of other states, private organizations or companies;
- (4) coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and
- (5) organizing public information activities regarding public health emergency response operations.

Title 10, chapter 3, part 2, MCA, concerns intergovernmental cooperation of emergency and disaster service agencies. Pursuant to section 10-3-201, MCA, the Division of Disaster and Emergency Services is directed to assist local agencies in emergency and disaster prevention, preparedness, response, and recovery to the extent of the Division's authority and responsibility. Section 10-3-202, MCA, provides for the negotiation of local and interjurisdictional agreements. The Governor is authorized to enter into mutual aid agreements with adjoining states and provinces. Sections 10-3-204, 10-3-205, 10-3-207, and 10-3-208, MCA, adopt the Interstate Mutual Aid Compact, and Title 10, chapter 3, part 10, MCA, adopts the Emergency Management Assistance Compact.

Public health personnel are required to be identified and to wear the identification. The identification

indicates the authority to exercise public health functions and emergency powers during the public health emergency.

Section 10-3-113, MCA, provides that disaster and emergency services organizations and personnel may continue to identify themselves by the use of the civil defense symbol.

The public health authority may request assistance from the public safety authority in enforcing orders. The public safety authority may request assistance from the organized militia in enforcing the orders of the public health authority.

Section 10-3-305, MCA, provides that during a state of emergency or disaster, the Governor is commander-in-chief of the militia and of all other forces available for emergency or disaster duty. The Governor is directed to delegate or assign command authority by prior arrangement embodied in the state disaster and emergency plan and program and appropriate executive orders. The Governor is authorized to use the services and facilities of the existing officers and agencies of the state, and all officers and agencies are required to cooperate with and extend their services and facilities to the Governor.

Under the Model Act, a declaration of a public health emergency terminates upon executive order, the passage of 30 days unless renewed, or by majority vote of each chamber of the Legislature.

Section 10-3-302, MCA, authorizes the Governor to declare a state of emergency. A state of emergency is limited to 20 days unless a declaration is issued by the President of the United States or the Legislature passes a joint resolution continuing the state of emergency. Section 10-3-303, MCA, authorizes the Governor to declare a state of disaster. A state of disaster is limited to 30 days unless a declaration is issued by the President of the United States or the Legislature passes a joint resolution continuing the state of disaster. A state of emergency or a state of disaster may be terminated by the Governor or by the Legislature by the passage of a joint resolution.

Article V. Special Powers During a Public Health Emergency -- Management of Property.

During a public health emergency, this article authorizes the public health authority, if there is reason to believe that there is a danger to the public health, to:

- (1) close, evacuate, or decontaminate any public or private facility; and
- (2) decontaminate or destroy any material.

Section 50-1-202, MCA, directs DPHHS to adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases.

Section 81-2-102, MCA, authorizes the Department of Livestock to slaughter or cause to be slaughtered any livestock in this state known to be affected with or that has been exposed to an infectious, contagious, communicable, or dangerous disease, when the slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds,

outbuildings, fixtures, furniture, or personal property infected with any infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease.

The public health authority may:

(1) procure, condemn, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities as may be reasonable and necessary to respond to the public health emergency. The materials and facilities include, but are not limited to, communication devices, carriers, real estate, fuels, food, and clothing.

(2) require a health care facility to provide services or the use of its facility if the services or use are reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization, or the ability to continue doing business in the state as a health care facility. The use of the health care facility may include transferring the management and supervision of the health care facility to the public health authority for the duration of a public health emergency.

(3) inspect, control, restrict, and regulate the use, sale, dispensing, distribution, or transportation of food, fuel, clothing and other commodities, as may be reasonable and necessary to respond to the public health emergency;

(4) with respect to roads and public areas:

(a) prescribe routes, modes of transportation, and destinations in connection with evacuation of persons or the provision of emergency services; and

(b) control or limit ingress and egress to and from any stricken or threatened public area, the movement of persons within the area, and the occupancy of premises in the area, if the action is reasonable and necessary to respond to the public health emergency.

Section 7-34-4101, MCA, provides that a city or town council may:

(1) establish, at a suitable place within or outside of the city or town limits, a hospital to prevent the spread of smallpox or other contagious or infectious diseases;

(2) regulate the control of the disease; and

(3) do all other acts that may be necessary for the promotion of health and to prevent the spread of infectious or contagious diseases within the city or town.

Section 10-3-104, MCA, provides that the Governor may direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the Governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery and may control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.

Section 50-2-118, MCA, provides that a local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

The public health authority is authorized to adopt and enforce measures to provide for the safe disposal

of infectious waste and human remains. Specific provisions apply to each type of measure.

Section 50-1-202, MCA, requires DPHHS to adopt rules for the transportation of dead human bodies.

Section 75-10-1003, MCA, prohibits the treatment, storage, transportation, or disposal of infectious waste in a manner not authorized in Title 75, chapter 10, part 10, MCA, or rules adopted under that part.

The public health authority may purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies that it considers advisable in the interest of preparing for or controlling a public health emergency. When necessary, the authority includes rationing, prioritization, and distribution of the material.

As noted earlier, section 50-1-202, MCA, directs DPHHS to adopt and enforce rules regarding the control of communicable diseases.

The state is required to pay just compensation to the owner of any facilities or materials that are lawfully taken or appropriated by a public health authority for its temporary or permanent use under this article. Compensation may not be provided for facilities or materials that are closed, evacuated, decontaminated, or destroyed when there is reasonable cause to believe that they may endanger the public health.

Section 10-3-311, MCA, provides that the Governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the Governor, to meet contingencies and needs arising from an emergency or disaster that results in damage to the works, buildings, or property of the state or any political subdivision or that menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

- (1) the political jurisdiction has exhausted all available emergency levies;*
- (2) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in sufficient amount to meet the emergency or disaster; or*
- (3) federal funds available for the emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.*

Article VI. Special Powers During a Public Health Emergency -- Control of Persons. During a public health emergency, this article requires the public health authority to use every available means to prevent the transmission of an infectious disease and to ensure that cases of contagious disease are subject to proper control and treatment.

As noted earlier, section 50-1-202, MCA, directs DPHHS to adopt and enforce rules regarding

the control of communicable diseases.

Section 50-50-105, MCA, provides that a person who has a communicable disease may not work in any establishment or in the handling or processing of food.

Section 52-2-723, MCA, provides that an applicant for licensure as a day-care center will arrange for the necessary precautions to guard against communicable diseases. Section 52-2-735, MCA, requires DPHHS to adopt rules for the protection of children in day-care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases.

The public health authority may:

- (1) perform physical examinations or tests that are necessary for the diagnosis or treatment of individuals;
- (2) vaccinate persons as protection against infectious disease and to prevent the spread of contagious or possibly contagious disease; and
- (3) treat persons exposed to or infected with disease.

The public health authority may isolate or quarantine any person whose refusal of medical examination or testing, vaccination, or treatment results in a danger to public health. Specific procedures are provided for isolation and quarantine.

Section 50-1-204, MCA, authorizes DPHHS to adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. Section 50-2-118, MCA, provides that local health officers may, as prescribed by rules adopted by DPHHS, establish and maintain quarantines and supervise the disinfection of places at the expense of the local board when a period of quarantine ends.

Section 81-2-102, MCA, provides that the Department of Livestock may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by livestock and that in the judgment of the Department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The Department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The Department may prescribe treatments and enforce sanitary rules that are necessary and proper to circumscribe, extirpate, control, or prevent the disease. Section 81-20-101, MCA, provides that the Department of Livestock may quarantine any lot, yard, land, building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by poultry and that, in the judgment of the Department, is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The Department may quarantine any poultry in this state when the poultry is affected with or has been exposed to disease or disease-carrying medium. The Department may prescribe treatments and enforce

sanitary rules that are necessary and proper to circumscribe, extirpate, control, or prevent the diseases. The Department is authorized to adopt and enforce rules and orders necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting poultry in this state and to adopt and enforce rules and orders necessary or proper for the inspection, testing, and quarantine of all poultry imported into this state.

The public health authority may collect specimens and perform tests on living persons, deceased persons, and living or deceased animals and may acquire any previously collected specimens or test results that are reasonable and necessary to respond to the public health emergency.

Section 81-2-108, MCA, provides that it is unlawful for any owner, agent, or person in charge of any domestic animal or animals that are known to be suffering from or exposed to a dangerous, infectious, contagious, or communicable disease to permit the animal or animals to run at large on the public range or public highway. It is the duty of the owner or agent or person in charge of animals that died or they have reason to suspect did die from an infectious, contagious, communicable, or dangerous disease to properly bury or burn the animal. Section 81-2-703, MCA, provides that a transportation permit may not be issued for livestock infected with or exposed to brucellosis, tuberculosis, or any other infectious, contagious, or communicable animal disease, except that cattle with a positive reaction to a recognized test for brucellosis may be permitted entry when destined directly for slaughter at a slaughterhouse under United States Department of Agriculture supervision.

Access to protected health information of persons who have participated in medical testing, treatment, vaccination, isolation, or quarantine programs or efforts by the public health authority is limited to those persons having a legitimate need to acquire or use the information to:

- (1) provide treatment to the individual who is the subject of the health information;
- (2) conduct epidemiologic research; or
- (3) investigate the causes of transmission.

Section 50-16-704, MCA, provides that the name of the person diagnosed as having an "infectious disease" may not be released to anyone, including the emergency services provider who was exposed, nor may the name of the emergency services provider who was exposed be released to anyone other than the emergency services provider, except as required by Title 50, chapter 16, part 7, MCA, by DPHHS rule concerning reporting of communicable disease, or as allowed by Title 50, chapter 16, part 5, MCA.

Protected health information held by the public health authority may not be disclosed to others without individual written, specific informed consent, except for disclosures made:

- (1) directly to the individual;
- (2) to the individual's immediate family members or personal representative;
- (3) to appropriate federal agencies or authorities pursuant to federal law;
- (4) pursuant to a court order to avert a clear danger to an individual or the public health; or

(5) to identify a deceased individual or determine the manner or cause of death.

The public health authority is also given emergency power concerning the licensing and appointment of health personnel. The powers include:

- (1) requiring in-state providers to perform certain functions;
- (2) temporary licensure for out-of-state health care providers; and
- (3) authorizing emergency medical examiners or coroners.

Section 10-3-204, MCA, provides that if a person holds a license, certificate, or other permit issued by any state or political subdivision of any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in Montana to meet an emergency or disaster and Montana gives recognition to the license, certificate, or other permit. Section 10-3-1001, MCA, provides similar treatment subject to conditions and limitations that the Governor of the requesting state may prescribe.

Article VII. Public Information Regarding Public Health Emergency. This article requires the public health care authority to inform the public when a health care emergency has been declared and when it terminates. The public health authority is also required to provide information about and referrals to mental health support personnel to address psychological responses to the public health emergency.

Section 10-3-304, MCA, requires executive orders and proclamations to be promptly disseminated by means calculated to bring their content to the attention of the general public. Section 10-3-106, MCA, requires the Division of Disaster and Emergency Services to coordinate whatever means exist for rapid and efficient communications in time of emergency or disaster. The Division is required to cooperate with the Department of Administration, in considering the desirability of supplementing communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network. The Division is required, in cooperation with the Department of Administration and local political subdivisions, to evaluate the possibility of multipurpose use of communications systems or networks for general state and local governmental purposes. The Division is also required to assist political subdivisions in the orderly development of telecommunications systems complementary to the statewide telecommunications network.

Article VIII. Miscellaneous. This article provides for:

- (1) the adoption of rules by the public health authority;
- (2) the transfer of funds as the Governor determines necessary;
- (3) the payment of expenses incurred during the emergency;
- (4) immunity for the state and its political subdivisions from liability during the emergency for acts other than those constituting gross negligence or willful misconduct;
- (5) varying degrees of protection from civil liability for private persons and entities who are negligent in performing a service or using their property for the state;
- (6) compensation to be paid to persons whose property is permanently or temporarily taken by

a public health authority during the emergency. The amount of compensation is to be calculated according to the laws of eminent domain.

As discussed earlier, sections 10-3-311 and 10-3-312, MCA, authorize the incurring of expenses and statutorily appropriate funds for disasters and emergencies. In addition, section 10-3-310, MCA, statutorily appropriates \$100,000 each biennium for incidents.

Section 10-3-111, MCA, provides that the state, a political subdivision of the state, or the agents or representatives of the state or a political subdivision of the state are not liable for personal injury or property damage sustained by a person appointed or acting as a volunteer civilian defense worker or member of an agency engaged in civilian defense activity during an incident, disaster, or emergency. Except in cases of willful misconduct, gross negligence, or bad faith, the entities are also not liable for the death of or injury to persons or for damage to property resulting from activities during an incident, disaster, or emergency.

Section 50-16-704, MCA, provides that the name of the person diagnosed as having an infectious disease may not be released to anyone, including the emergency services provider who was exposed, nor may the name of the emergency services provider who was exposed be released to anyone other than the emergency services provider, except as required by Title 50, chapter 16, part 7, MCA, by DPHHS rule concerning reporting of communicable disease, or as allowed by Title 50, chapter 16, part 5, MCA.

Section 50-16-1004, MCA, provides that AIDS, HIV-related conditions, and HIV infection are to be treated as other communicable diseases, by adopting the most currently accepted public health practices with regard to testing, reporting, partner notification, and disease intervention.

Section 50-18-101, MCA, provides that human immunodeficiency virus (HIV), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health.

Section 81-2-104, MCA, provides that when the Department of Livestock determines that it is necessary to eradicate or control an infectious, contagious, communicable, or dangerous disease of livestock in this state, in cooperation with the United States Department of Agriculture or other federal agency, and to appraise and destroy animals affected with or that have been exposed to a disease or to destroy property in order to remove the infection and complete the cleaning and disinfection of the premises or to do any act or incur any other expense reasonably necessary in suppressing this disease, the board may accept and adopt on behalf of the state the rules adopted by the United States Department of Agriculture or other federal agency under authority of an act of Congress or the portion considered necessary, suitable, or applicable. The Department of Livestock may adopt other rules necessary or desirable for this purpose and cooperate with the United States Department of Agriculture or other federal agency in the enforcement of the rules accepted and adopted.

Section 81-2-201, MCA, provides that animals that are determined by the Department of Livestock to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, or other infectious, contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, and are destroyed by order of the Department as a sanitary safeguard must be paid for on the basis of the full appraised value of the animals. Section 81-2-209, MCA, provides that compensation or indemnity will not be paid for the destruction of livestock affected with tuberculosis or other infectious, contagious, communicable, or dangerous disease unless the entire herd or band of affected livestock is under the supervision of the Department for the eradication of the disease.

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