

NORTH CAROLINA STATUTORY AUTHORITY TO ADDRESS PANDEMIC INFLUENZA

I. IMPORTANT DEFINITIONS

A. Communicable Disease

Communicable Disease is defined in G.S. 130A-2(1b) as an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host, or vector, or through the inanimate environment.” This definition is the basis for many of the communicable disease statutes that would be used to prevent the spread of disease in the event of a pandemic.

B. Communicable Condition

Communicable Condition is defined as the state of being infected with a communicable agent but without symptoms. This term is important because there are people who are identified as carriers of disease without suffering the effects of the disease. They often unwittingly spread disease because they show no symptoms and therefore are less likely to be identified by healthcare providers as being infected.

C. Departmental References

For the purposes of this section, HHS means the North Carolina Department of Health and Human Services and Secretary means the Secretary of HHS, unless otherwise stated. CHS refers to the Commission for Health Services, the rulemaking body for communicable disease control and the majority of other public health issues in North Carolina.

D. NBC Agents

While not likely to apply in the most probable scenarios of transmission, the consideration of the State’s powers to address a possible terrorist incident using some form of influenza as a biological agent is included in the cited statutes. Within this context, a number of the statutes governing control of communicable diseases, including those specifically addressing a response to a possible terrorist incident, refer to the use of nuclear, biological or chemical agents. (See G.S. 130A-475-477; 14-288.21) NBC agents is used as a shorthand term for this phrase.

II. PUBLIC HEALTH STATUTES

North Carolina has a strong public health system involving both state agencies and local health departments that provide the foundation for responding to a pandemic. North Carolina has a core set of statutes dealing with communicable disease control that would therefore be essential tools in identifying and responding to pandemic influenza.

A. COMMUNICABLE DISEASE CONTROL

1. G.S. 130A-134 -130A-142 - Establish requirements for physicians, laboratories and other designated entities to report listed communicable diseases and conditions to local health departments and for local health departments to report this information to HHS. Also provides immunity for making such reports. Gives rulemaking authority for listing communicable diseases and conditions and form, content and timing of reports to CHS. The rules are found at 10A NCAC 41A .0100. G.S. 130A-141.1 allows the State Health Director to require temporary reporting of symptoms, trends or diseases that may indicate a danger to the public health without going through the rulemaking process first.

2. G.S. 130A-143 - Provides for strict confidentiality of communicable disease information unless one of eleven listed exceptions is met. The exceptions allow such information to be shared with other public health agencies and, under limited circumstances, with law enforcement, to prevent or control the spread of communicable diseases or conditions.

3. G.S. 130A-144 - Sets out provisions requiring the investigation and control of communicable diseases and conditions. The CHS adopts specific control measures for communicable diseases that must be followed to prevent the spread of disease. Local Health Directors are charged with enforcing control measures, and the statutes require persons to comply with control measures, including Paragraph (f) that states all persons shall comply with control measures, including submission to examinations and tests. The control measure rules are found at 10A NCAC 41A .0200. This statute also requires physicians, medical facilities and laboratories to provide public health officials access to medical or other records as part of the investigation of a known or suspected communicable disease outbreak or investigation of a known or suspected case.

4. G.S. 130A-145 - Establishes the authority of the State Health Director and of a local health director to issue isolation or quarantine orders. The isolation or quarantine order initially lasts up to 30 days but can be extended by court order. (Isolation authority is defined in G.S. 130A-2(3a) and Quarantine authority is defined in G.S. 130A-2(7a)).

5. G.S. 130A-146 - Sets out special requirements for transportation of dead bodies for persons who have died from highly communicable diseases.

6. G.S. 130A-147 - Gives the CHS authority to adopt rules for the detection, control and prevention of communicable diseases.

7. G.S. 130A-480 – Establishes mandatory syndromic surveillance program to review electronic hospital emergency department data to detect and investigate public health threats that may be related to a terrorist incident using NBC agents or an epidemic or infectious, communicable or other disease.

B. REMEDIES

1. G.S. 130A-17 - Provides the Secretary of HHS or local health director with authority to enter premises when necessary to enforce provisions of Chapter 130A or rules adopted by CHS or local board of health.

2. G.S. 130A-18 - Allows Secretary of HHS or local health director to pursue injunctive relief in superior court for violation of Chapter 130A or rules adopted by CHS or local board of health.

3. G.S. 130A-19 - Allows Secretary or local health director to issue order to abate a public health nuisance. If the person does not comply, can pursue court action to order abatement.

4. G.S. 130A-20 - Allows Secretary or local health director to order abatement of an imminent hazard or to enter property and abate the imminent hazard. Imminent Hazard is defined in G.S. 130A-2(3).

5. G.S. 130A-25 - Makes a violation of any of the laws in Chapter 130A or rules adopted pursuant to Chapter 130A a misdemeanor. Paragraph (b) is particularly important because it provides for specific sentencing outside of the Structured Sentencing Act for persons violating control measures (G.S. 130A-144(f)) or isolation or quarantine orders (G.S. 130A-145). Persons convicted under this section can be sentenced for up to two years in designated prisons with the ability to properly manage prisoners with communicable diseases.

C. STATUTES SPECIFICALLY ADDRESSING A RESPONSE TO A POSSIBLE TERRORIST INCIDENT

1. G.S. 130A- 475 –479 - Sets out State Health Director's powers if she reasonably suspects that a public health threat may exist and may have been caused by a terrorist incident using NBC agents.

III. EMERGENCY MANAGEMENT/PUBLIC HEALTH COORDINATION

A. G.S. 166A-5(3)b1 requires a special component of the Emergency Operations Plan to be prepared in coordination with the State Health Director that includes specific provisions regarding public health matters, including guidelines for prophylaxis and treatment of exposed and affected persons, allocation of the National Pharmaceutical Stockpile and appropriate conditions for quarantine and isolation to prevent further transmission of disease. (See Appendix to Emergency Operations Plan).

B. G.S. 166A-6 - Provides for the Governor's authority to make a Disaster Proclamation and sets out the Governor's powers once a Disaster has been declared.

C. G.S. 166A-14 - Provides for certain immunity and exemptions from liability for an emergency management worker, firm, partnership, or corporation complying with an emergency management measure of the state or political subdivision of the state.

D[C]. G.S. 166A-40 - 53 - Establishes the Emergency Management Assistance Compact (EMAC) in conjunction with other states to provide mutual aid and support in managing declared emergencies or disasters.

IV. CRIMINAL ACTS AND CRIMINAL PROCEDURE

A. CRIMINAL ACTS

See G.S. 130A-25 in II. B. 5. above.

B. CRIMINAL PROCEDURE

1. G.S. 15A-401(b)(4) - allows a law enforcement officer to detain a person violating an order restricting the freedom of movement of a person or access to a person issued by the state or local health director at a place designated by the health director until the person's initial appearance before a magistrate or judge. This provision is intended to prevent the spread of the disease to others in the courts or jails as part of the normal processing of someone on criminal charges.

2. G.S. 15A-534.5 - allows the judge or magistrate at an initial appearance to deny bail if the judge or magistrate determines that a person arrested for violation of the state or local health directors order restricting their freedom of movement or access to them poses a threat to others. It also allows the judge or magistrate to confine the person to a designated area that will prevent the threat to others

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