

# The Model State Emergency Health Powers Act (MSEHPA)

*When explaining to people that the government will order a mass vaccination campaign as early as mid-September, 2009, many say, “They aren’t going to vaccinate me.” If you ask public health and law enforcement officials they will tell you that the law does not allow people to be vaccinated against their will. That may be true in times of peace while elected officials are performing their duties and civil governments are still empowered. However, in a declared state of emergency, the civil authority is supplanted by martial, or military authority. Civilian officials and employees may be “deputized” to help administrate martial authority during an emergency, but civil law is effectively suspended for the duration of the emergency. The following article, originally written in Dec., 2001, has been edited and updated slightly to show that, if/when a medical emergency is declared, people will be forced to submit to a variety of inconveniences without their consent—including invasive medical interventions—or face severe consequences one generally associates with war zones. It is also plainly stated that no one working for or with the government will be held liable for death or damages to persons or their properties should they result from good-faith performance of their “lawful” duties. Since October, 2001, the tenets of MSEHPA has been sewn into the pandemic preparedness plans of most, if not all, of the several states. ~PandemicFluOnline*

Within weeks after the tragic events of Sept. 11, 2001, the Centers for Disease Control and Prevention (CDC) began promoting health policy legislation that dramatically suspends civil rights during declared state of biological emergency. The text of the “Model State Emergency Health Powers Act (MSEHPA)” gives public health officials and governors of the several states the power to arrest, transport, quarantine, drug and vaccinate anyone suspected of carrying a potentially infectious disease. *The Boston Globe* originally broke the October 31, 2001. The story was almost immediately forwarded to medical freedom activists throughout the country who responded en masse in outspoken opposition to the proposal. The article was quickly removed from *The Globe's* website.

The 40-page MSEHPA was authored by Lawrence O. Gostin and James G. Hodge of the Center for Law and the Public's Health at Georgetown and Johns Hopkins universities.

While stating that their proposal considered the “civil rights of the individual,” the appeals process described in the text describes the nearly absolute powers of public health authorities to detain people against their will and force them to submit to whatever medical intervention deemed appropriate by authorities. The process gives little hope that the individual will prevail in an appeal and that he will continue to be detained throughout the process.

Unless intentional harm can be proven, the proposal states, “Neither the state, its political subdivisions, including the governor, public health authorities, the police, or other state officials, [will be held liable for] the death or injury to persons, or damage to property, as

a result of complying with, or attempting to comply with this Act or any rules promulgated pursuant to this Act.”

Then Department of Human and Health Services Secretary Tommy Thompson acknowledged existence of the CDC model. He said, “We need not only a strong health infrastructure and a full stockpile of medical resources, but also the legal and emergency tools to help our citizens quickly.”

Under the proposed law, one case of smallpox or swine flu in a public school could trigger authorities to urge a governor to declare a state of emergency. Once such is declared, the U.S. Constitution, Bill of Rights and most cherished civil liberties will be immediately suspended in addition to states being empowered to take immediate possession of private property under the doctrine of eminent domain.

Under Section 406 of the proposal under the heading, “Compensation,” it is explained that, “Compensation shall 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...”

Under the “Mandatory Medical Examinations” section (502) of the law, persons refusing to submit to medical examinations and/or testing are liable for misdemeanors and forced isolation. If public health authorities suspect individuals may have been exposed to broadly defined infectious diseases, or otherwise pose a risk to public health, officials may issue detainment orders. In the case of an urban attack, or even one suspected, possibly thousands of people could be marshaled into isolation camps, according to the law. In this case, physicians, assisted by police, will be required to perform state medical examinations and tests.

Under the law, “infectious diseases” are very broadly defined. “An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person,” the authors explain in the text.

Section 504 of the Act details vaccination and treatment protocols. Following these mandates, public health authorities may compel people to be inoculated and/or drugged with any medicaments selected by the state. Individuals refusing to be vaccinated or treated would be liable for a misdemeanor, subject to police arrest, isolation or quarantine.

“Section 807” repeals existing state laws that are in conflict with the Act. Under this part, for instance, previous laws granting medical, religious, or philosophical exemptions to vaccination would be repealed.

Former Secretary Thompson explained that, “the Centers for Disease Control and Prevention (CDC) led a process to develop a Model State Emergency Health Powers Act that will be an important tool for state and local officials to respond to bioterrorism and other public health emergencies.”

Thompson also stated that, the proposed model has been developed “Over the past six months.”

According to the CDC production, “*Preparing for the Next Influenza Pandemic*” which was broadcast via satellite to health departments all over the world February 26, 1999, the federal government has been developing the infrastructure for total control of medical emergencies since 1973. The CDC stated that, after the swine flu debacle in which high percentages of the 45 million people who were inoculated against the disease developed a different disease called Guillain Barre, President Nixon ordered that the *Federal Guidebook to Pandemic Preparedness* be prepared.

The CDC admitted that the guidebook was still in “draft form” as of 1999, but that President Clinton ordered the formation of the Working Group on Influenza Preparedness (known by the CDC as “the GRIP”) take up where the guidebook left off. As of this writing, *Federal Guidebook to Pandemic Preparedness* has not yet been made available to the public.

#### **Official MSEHPA update**

*The link below contains the most recent tracking of MSEHPA and plainly states the intent of the model act’s provisions. To be certain as to how officials in your state will be administrating a declared state of medical emergency, you can obtain copies of state and local pandemic preparedness plans online or through your local health department. You will likely discover that your state and local plans mirror the key provisions of MSEHPA.*

#### **From the weblink at**

<http://www.publichealthlaw.net/MSEHPA/MSEHPA%20Surveillance.pdf>

The [Model State Emergency Health Powers Act](#) (MSEHPA) grants public health powers to state and local public health authorities to ensure a strong, effective, and timely planning, prevention, and response mechanisms to public health emergencies (including bioterrorism) while also respecting individual rights. Developed by the *Centers* in collaboration with a host of partners, MSEHPA has been used by state and local legislators and health officials nationwide as a guide for considering public health law reform in their states.

**Legislative Status Update:** Since its completion on December 21, 2001, the *Centers* has been tracking state legislative activity related to MSEHPA. As of **July 15, 2006**, the Act has been introduced in whole or part through **171** bills or resolutions in forty-four (**44**) states, the District of Columbia, and the Northern Mariannas Islands. Thirty-eight (**38**) states [AL, AK, AZ, CA, CT, DE, FL, GA, HI, ID, IL, IN, IA, LA, ME, MD, MN, MO, MT, NV, NH, NJ, NM, NC, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WI, and WY] and DC have passed a total of **66** bills or resolutions that include provisions from or closely related to the Act. The extent to which the Act's provisions are incorporated into each state's laws varies.

Lawrence O. Gostin, et al. *The Model State Emergency Health Powers Act: Planning for and Response to Bioterrorism and Naturally Occurring Infectious Diseases*, 288 JAMA 622 (2002)

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