



An Overview of State Criteria for Declaring a Public Health Emergency

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Background

States vary substantially in the circumstances and criteria by which a governor may declare a state of emergency or crisis. Circumstances for declaring emergencies may include natural disasters, air pollution, drought, water supply, public disorder, terrorist attack or other events including public health emergencies. In this report, we characterize the State of Nebraska governor’s statutory authority to declare a public health emergency and to compare Nebraska with other states. Afterward, we undertake a survey of relevant statutes concerning public health emergencies in other states. An initial list of regulations for declarations of emergency was provided by the Network for Public Health Law—an initiative of the Robert Wood Johnson Foundation and a non-profit national organization of public health attorneys and practitioners in the US.¹ Data on statutes are current as of June 16, 2015. We reviewed statutes pertaining to emergency declarations for all 50 states plus DC. A list of the statutes for each state and DC may be downloaded from the Center for Health Policy website at www.unmc.edu/publichealth/chp.

State of Nebraska Statutes

The statutory language governing the circumstances by which a governor may declare an emergency or disaster includes the following:

The Governor shall be responsible for meeting the dangers to the state and people presented by disasters, emergencies, and civil defense emergencies, and in the event of disaster, emergency, or civil defense emergency beyond local control, he or she may assume direct operational control over all or any part of the emergency management functions within this state. (§ 81-829.40(3))

In order to declare a disaster or emergency, the governor must find that “a disaster, emergency, or civil defense emergency has occurred or that the occurrence or threat thereof is imminent”. In addition to the above, the governor may declare a vital resource emergency if this crisis is “imminent or has occurred” (§ 84-164). The declaration of a public health emergency is not specifically addressed in the statute.

¹ Network for Public Health Law. Emergency declaration authorities across all states and D.C. Available at: https://www.networkforphl.org/_asset/gxrdwm/Emergency-Declaration-Authorities.pdf. Accessed September 22, 2016.



In addition, there is statutory provision for the declaration of local emergencies. Local emergencies may only be declared by the executive officer of the local government (or a person authorized by the local government) pertaining to the area in question. The executive officer must find that “disaster or emergency” conditions exist (§ 81-829.50).

Comparison of Nebraska with Other States

Thirty-four states including DC authorize their executive officers to declare public health emergencies if necessary. For example, Alabama permits the governor to proclaim a state of emergency if a “public health emergency has occurred” and the “safety and welfare” of state residents require this declaration (§ 31-9-8). Other states such as New Jersey, New Mexico, and South Carolina require that the declaration be made in consultation with state health officers such as secretaries or commissioners of health.

Furthermore, states vary in the scope of a public health emergency, such as limiting these emergencies to high-risk communicable diseases or bioterrorism. In Arizona, a public health emergency may occur during an ongoing state of emergency or war declared by the governor. Furthermore, bioterrorism, epidemic disease, or biological toxin are specified as public health emergencies (§ 36-787). Texas limits the declaration of a public health emergency to immediate threats from highly communicable diseases with high risk of death or disability for large numbers of people (§ 81.003(7)(a)).

Among states in the central states region, South Dakota, Wyoming, Iowa and Minnesota specifically provide for the declaration of public health emergencies. South Dakota requires the secretary of health to declare a public health emergency with consent of the governor (§ 34-22-42). South Dakota defines a public emergency in the following way:

a public health emergency is an occurrence or imminent threat of an illness, health condition, or widespread exposure to an infectious or toxic agent that poses a significant risk of substantial harm to the affected population.(§ 34-22-41)

Wyoming defines a public health emergency as:

...an occurrence or imminent threat of an illness or health condition caused by an epidemic or pandemic disease, a novel and highly fatal infectious agent or a biological toxin that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. The governor shall declare when a public health emergency exists or has ended.(§ 35-4-115)

The state of Iowa uses the term “public health disaster”, which is defined as a disaster involving “an imminent threat of an illness or health condition” (§ 29C.6). The following conditions must also be met:

- (1) Bioterrorism or other act of terrorism.
- (2) The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin.
- (3) A chemical attack or accidental release.
- (4) An intentional or accidental release of radioactive material.
- (5) A nuclear or radiological attack or accident.
- (6) A natural occurrence or incident, including but not limited to fire, flood, storm, drought, earthquake, tornado, or windstorm.



(7) A man-made occurrence or incident, including but not limited to an attack, spill, or explosion.

In addition, the conditions above must pose a high probability of incurring many fatalities, disabilities, or health consequences or widespread exposure to infectious or toxic agents (§ 29C.6).

In Minnesota, a public health emergency is defined in the following way:

"Public health emergency" means an unanticipated and temporary condition threatening the health of a specific population such that the resources of one or more community health boards cannot reasonably be considered adequate to respond to the emergency needs of the affected population. (§ 4735.0100)

Other states in the region such as Colorado, Kansas, Missouri and North Dakota do not have statutory language on the declaration of public health emergencies.

Federal Declaration of a Public Health Emergency

The Secretary of the US Department of Health and Human Services (DHHS) has the authority to declare a public health emergency under the following circumstances: (1) a disease or disorder presents a public health emergency; or (2) that a public health emergency, including significant outbreaks of infectious disease or bioterrorist attacks, otherwise exists (Section 319 of the Public Health Service Act). After declaring the public health emergency, the Secretary has the authority to:

Take appropriate actions in response to the emergency, including: making grants; entering into contracts; and conducting and supporting investigations into the cause, treatment, or prevention of the disease or disorder.²

Conclusions

In Nebraska, there have been 55 disaster and emergency declarations since 1960.³ All the declarations have been weather related, such as for severe winter storms, tornados and flooding. Although the governor of Nebraska has statutory authority to declare emergencies or disasters if they are imminent or have occurred, it is unclear whether this authority extends to public health crises. Furthermore, the authority to declare an emergency at the local level rests with the executive officer of the local government body. The lack of specific statutory language addressing public health crises or emergencies is at variance with the majority of states. However, many of these states define public health emergencies as involving infectious disease or biological toxins. In the central states region of the US, Iowa, South Dakota and Wyoming have these events in their definitions for public health emergencies. Minnesota provides a broad definition of a public health emergency as a condition “threatening the health” of a population and in which local resources are insufficient to respond to the condition. Given past threats from communicable disease such as Ebola and public health challenges that may arise, the State of Nebraska should consider whether specific executive authority to declare public health emergencies is necessary.

² Office of the Assistant Secretary for Preparedness and Response. US Department of Health & Human Services. Public Health Emergency Declaration. Available at: <http://www.phe.gov/Preparedness/legal/Pages/phedeclaration.aspx>. Accessed September 22, 2016.

³ Federal Emergency Management Agency (FEMA). US Department of Homeland Security. Disaster Declarations for Nebraska. Available at: <https://www.fema.gov/disasters/grid/state-tribal-government/68>. Accessed September 22, 2016.



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CONFLICT OF INTERESTS

None

DISCLAIMER

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