



IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

## FREQUENTLY ASKED HEALTH-RELATED LEGAL QUESTIONS REGARDING THE COVID-19 PANDEMIC

Last Updated March 24, 2020

This FAQ addresses health-related legal questions that have arisen during the COVID-19 pandemic. This document is intended to provide guidance to county attorneys who represent local public health departments, hospital attorneys, and other members of the bar advising clients on health-related issues. This FAQ was developed by the Iowa Attorney General's Office but does not constitute a formal opinion of the Attorney General. This resource is intended for general informational purposes only and does not constitute legal advice. Every effort will be made to keep this document up-to-date, but in this rapidly changing and fluid legal landscape, changes to this information may not be immediately available.

### **Public Health Disaster**

#### **What is a public health disaster and what does it mean legally that a public health disaster has been declared?**

On March 17, 2020, Governor Reynolds issued a Proclamation of Public Health Disaster Emergency. A public health disaster is defined in Iowa law as a state of disaster emergency proclaimed by the Governor in consultation with the Department of Public Health for a disaster that involves an imminent threat of a health condition caused by the appearance of a novel infectious agent and that poses a high probability of a large number of serious health consequences. Iowa Code § 135.140(6).

During a public health disaster, the Governor and the Department of Public Health have broad legal authority to take all reasonable measures necessary to prevent the transmission of the virus and to prevent, control, and treat the infectious disease. These legal authorities are contained in part at Iowa Code sections 135.144 and 29C.6. For a full description of these legal authorities, see "[Legal Authority of the State of Iowa to Prevent, Detect, Manage, and Contain a Public Health Disaster.](#)"

## **How do I know what statutes and rules have been waived during the public health disaster?**

Iowa Code § 29C.6(6) authorizes the Governor to suspend the provisions of regulatory statutes and rules under certain circumstances if strict compliance with the statute or rule would in any way prevent, hinder, or delay necessary action in coping with the disaster. The Governor has suspended the provisions of hundreds of statutes and rules to enable state and local governments to more adeptly respond to the disaster; to ease the burdens of Iowans impacted by the disaster; and to provide flexibility to health care providers, response agencies, and others serving on the front lines in providing response efforts during this disaster.

For a complete list of all state statutes and rules that have been suspended, see the following Proclamations at the links provided herein: (1) [March 9, 2020, Proclamation of Disaster Emergency](#) ; (2) [March 17, 2020, Proclamation of Public Health Disaster Emergency](#) (includes certificate of need, telehealth provisions, and professional licensing provisions for certain professions); (3) [March 19, 2020, Proclamation of Disaster Emergency](#) (includes open meetings provisions); and (4) [March 22, 2020](#) (includes a broad range of professional licensing provisions related to continuing education, renewal, background checks, and other licensure requirements). The individual agencies and professional licensing boards affected by these temporary suspensions will be issuing guidance for licensees regarding the details of the scope and nature of these suspensions.

The federal government has also acted to waive certain federal statutes and regulations through both the federal declarations of national emergency and public health emergency. DHSS has issued § 1135 waivers which waive EMTALA sanctions for the direction or relocation of patients to a different location to receive screening under certain conditions; waive certain provisions of HIPAA (discussed more fully below); waive licensure requirements pertaining to out-of-state practice; waive certain conditions of participation, certification requirements, and program participation requirements for health care providers as deemed necessary by CMS to ensure the availability of health care services; waive STARK law sanctions; waive payment limits under Medicare Advantage; and impose modified timelines for performance of required health care program activities. In addition, CMS has issued waivers of a variety of health care laws including waivers to provide more flexibility to hospitals and SNFs and waivers of enrolment screening requirements. [Here is a complete listing of federal waivers.](#)

## **How do I know what health-related businesses are closed during the public health disaster?**

Pursuant to the broad legal authorities contained in Iowa Code §§ 29C.6 and 135.144, the Governor has issued closure of several businesses. The full list of closures are contained in the [March 17, 2020, Proclamation of Public Health Disaster Emergency](#) and [March 22, 2020, Proclamation of Disaster Emergency](#).

## **CLINICAL ISSUES**

### **How do my health care clients know who to test for COVID-19 and under what criteria, and what should they do if they have a patient who tests positive?**

The Iowa Department of Public Health has detailed guidance on its website regarding testing and other questions of a clinical nature. The Department and the State Hygienic Laboratory have issued a [“COVID-19 Testing Framework For Iowa.”](#)

If a health care provider, hospital, or laboratory orders or conducts a test for COVID-19 all such tests must be immediately reported to the Department. On March 19, 2020, the Department issued a [Mandatory Reporting Order](#), which designates all positive and negative results for COVID-19 as immediately reportable.

### **What if a health care provider, EMS personnel, law enforcement officer, or other essential services personnel is exposed to COVID-19?**

[The Department has issued guidance](#) that provides distinct recommendations for those essential services personnel who are well as compared to those who are ill with a fever or respiratory symptoms.

### **What can my health care clients legally share with the Department of Public Health or with local public health during the COVID-19 outbreak?**

Iowa law requires health care providers, hospitals, and laboratories to immediately report to the Department all test results (negative and positive) for COVID-19 and to assist the Department and local public health with all facets of this outbreak investigation. This includes providing any information requested by the Department or the local health department including medical records, exposure histories, medical histories, contact information, and test results. Iowa Code §§ 139A.3, 139A.3A, 641 IAC 1.7. HIPAA expressly authorizes these disclosures to public health authorities for purposes related to disease reporting, investigation, and surveillance. 45 CFR 164.512(b)(1).

## **Have there been any HIPAA waivers or guidance that affect my health care clients during this disaster emergency?**

1. On March 17, 2020, the Office for Civil Rights (OCR) within the Department of Health and Human Services announced it will exercise its enforcement discretion to waive potential penalties for HIPAA violations involving health care providers who treat their patients/clients through everyday communication technologies during the period of the public health emergency. This determination applies to all widely available, non-public facing communication apps including FaceTime, Google Hangouts video, and Skype, used in good faith for any telehealth treatment or diagnostic purpose regardless of whether the telehealth service is directly related to COVID-19. Providers may not use Facebook live, Twitch, TikTok, and other similar public-facing apps.
2. On March 16, 2020, OCR announced limited waivers of penalties for hospitals for noncompliance with certain HIPAA provisions, including waivers of the following:
  - a. The requirements to obtain a patient's agreement to speak with family members or friends involved in the patient's care
  - b. The requirement to honor a request to opt out of the facility directory
  - c. The requirement to distribute notice of privacy practices
  - d. The patient's right to privacy restrictions
  - e. The patient's right to request confidential communication

The waiver of these provisions applies only to hospitals that have instituted a disaster protocol and for up to 72 hours from the time such protocol is implemented.

3. On March 16, 2020, OCR clarified that even though the remainder of HIPAA is not suspended at this point in time, existing regulatory provisions in HIPAA authorize disclosures of health information in particular circumstances relevant to this public health disaster, including the disclosure of information without patient authorization: (1) for treatment, (2) to a public health authority, at the direction of a public health authority, or to persons at risk of contracting or spreading a disease if other law authorizes the notification and as necessary to control the spread of the disease; (3) disclosures to family, friends, and others involved in an individual's care and for notification; and (4) disclosures to prevent or lessen a serious and imminent threat. [Here is additional guidance regarding the application of these allowable disclosures during a public health disaster.](#)

**Is a hospital legally authorized to notify other providers who have treated or will treat a hospital patient infected with COVID-19? For example:**

**If EMS has transported a patient from a long-term care facility to a hospital where the patient tests positive, can or must the hospital inform EMS and the long-term care facility that the patient tested positive?**

If a hospital patient tests positive for COVID-19 the hospital must report the positive case to the Department of Public Health. The Department and the county health department will then notify all contacts to the positive case that they have been exposed to a positive patient, including the EMS providers who transported the patient and the long-term care facility from which the patient was transferred. Local public health will provide guidance to EMS providers and the long-term care facility about monitoring their condition, testing, and isolation. [Here is a complete listing of this guidance.](#)

Hospitals have expressed concern that local public health may become overwhelmed and unable to promptly notify EMS and other health care providers who cared for the patient. At the current time, it is important that local public health conduct the notifications to ensure that uniform and consistent guidance is provided to such contacts about required actions. If the local public health system becomes overwhelmed and is unable to provide notification to other health care providers who may have been exposed to the patient, the Department may request that the hospital conduct such notification. Such notification would be authorized under HIPAA to occur without patient authorization if the notification was made at the direction of the Department and accompanied by a statement that the notification of a person exposed to COVID-19 is necessary to conduct a public health intervention and to prevent or lessen a serious and imminent threat to the health or safety of the provider. 45 CFR 164.512(b)(1)(i) and (iv), 164.512(j).

**If a hospital patient who has tested positive is going to be transferred to another facility, can or must the hospital notify EMS and the receiving health care facility that the patient has tested positive for COVID-19?**

Yes, disclosure of this information is necessary to treat the patient and thus may occur without patient authorization. 45 CFR 164.502(a)(1)(ii), 164.506(c).

## **COUNTY QUESTIONS**

### **What is the role of local public health departments in conducting disease investigations in the COVID-19 outbreak?**

Local public health works alongside the Department of Public Health to investigate and control COVID-19 cases in their jurisdiction. Local public health is responsible for notifying the ordering health care provider of the positive result, contacting the patient to conduct the COVID-19 interview, providing information to cases about self-quarantine and isolation, and monitoring the positive cases. [Here is detailed guidance on these duties.](#)

### **What information can local public health disclose to the media about positive COVID-19 cases?**

Iowa Code § 139A.3(2)(b) provides that information regarding disease investigations “provided to or maintained by the department, a local board, or a local department, which identifies a person infected with or exposed to a reportable or other disease or health condition, is confidential and shall not be accessible to the public.” *See also* Iowa Code § 22.7(16).

This law further provides in section (c) that when the Department and local boards share information about a disease investigation with the public they must do so “in a manner which prevents the identification of any person or business” involved in the investigation. A business name can be released to the public only when the state epidemiologist or the director of the Department “determines such a release of information necessary for the protection of the health of the public.” Local boards cannot make the determination independently to release the name of a business, that decision rests with the state epidemiologist and the Department director.

With respect to individuals, the Department follows its established policy regarding release of confidential information to ensure it does not identify persons involved in a disease investigation in a manner which would violate section 139A.3.

**Can local public health take action which is different from the orders of the Department of Public Health and the Governor's office? For example, could a county board of health issue a quarantine or isolation order that is less restrictive than that the Department has ordered, or could a county board of health issue an emergency proclamation that is more restrictive than that issued by the Governor?**

Local boards of health must act in a manner which is consistent with the orders and directions of the Department and the Proclamations issued by the Governor. Iowa Code § 137.104 provides local boards of health shall enforce state health laws and the rules and lawful orders of the state health department. Iowa Code § 137.104(1)(a). The local board is also granted the power to make and enforce reasonable rules not inconsistent with the law and rules of the state board as may be necessary for the protection and improvement of the public health. Iowa Code § 137.104(1)(b) and 641 IAC 77.3(2)(b)(2); *see also* Iowa Code § 135.33 (local boards shall enforce the rules of the department and carry out its lawful directions).

With respect to quarantine and isolation orders, the Department of Public Health possesses primary jurisdiction in the COVID-19 outbreak and Department orders may not be altered or amended by local boards. Local boards must also assist the Department in implementing such orders. *See* 641 IAC 1.9(10).

Where a public health disaster exists, the Department in conjunction with the Governor is empowered to take reasonable measures to prevent transmission of infectious diseases and ensure all cases of communicable diseases are identified, controlled, and treated; order testing and exams to diagnose such disease; order treatment; quarantine or isolate individuals; and close schools to prevent transmission. Iowa Code § 135.144. These broad powers granted to the Department indicate that it has the primary authority to respond and coordinate efforts to alleviate a public health disaster. *See also* Iowa Code § 135.141.

The above-cited authorities indicate the broad powers vested in the Governor and the Department to respond to a public health disaster emergency in a coordinated manner were intended to be comprehensive. Authorizing local boards of health to issue their own orders or pass their own local emergency proclamations inconsistent with State orders, proclamations, and plans of action and could frustrate a comprehensive, coordinated public health response to the disaster.

Please note that this FAQ does not address whether county boards of supervisors or city councils may issue orders which are more stringent than the Governor's proclamations, such as shelter-in-place orders. Those questions are beyond the scope of this document.

## **What is the role of local law enforcement in assisting the Governor's office and the Department in enforcing public health order and the Governor's proclamations?**

During this public health disaster, the Department has issued voluntary home confinement orders and is now working with local public health to request that certain exposed and infected persons voluntarily confine themselves to their homes. 641 IAC 1.9(2). If the Department becomes aware that an individual under voluntary home confinement violates the terms and conditions of that confinement, the Department may issue a mandatory home or facility quarantine or isolation order. Iowa Code § 139A.4; 641 IAC 1.9(2).

Local law enforcement has a duty to enforce and execute a Department order for quarantine or isolation within their respective jurisdictions. Iowa Code § 135.35, 641 IAC 1.9(10)(c). The Department "shall take all reasonable measures to minimize the risk of exposure to peace officers and others assisting with enforcement of an isolation or quarantine order." Pursuant to Iowa Code § 135.38, an individual who knowingly violates a Department order for isolation or quarantine shall be guilty of a misdemeanor.

In addition, the Governor has issued several Proclamations of Disaster Emergency pursuant to Iowa Code sections 29C.6, 135.140, and 135.144, which contain a number of orders closing certain public locations. Under Iowa Code chapters 29C and 135, these orders are enforceable by peace officers and a violation of such orders is a crime: "A peace officer, when in full and distinctive uniform or displaying a badge or other insignia of authority, may arrest without warrant any person violating or attempting to violate in such officer's presence any order or rule, made pursuant to chapter 29C. This authority shall be limited to those rules which affect the public generally." Iowa Code section 29C.18(2). In addition, officers of homeland security and emergency management "shall execute and enforce the orders or rules made by the governor or under the governor's authority." Iowa Code section 29C.18(1).

## **IMMUNITIES**

### **Are there immunities which protect health care providers and businesses which cooperate with the state during the disaster or which provide care to victims of this public health disaster?**

A broad range of immunities exist to legally protect those who cooperate with the government to mitigate the effects of the disaster and those who offer assistance during a public health disaster, including:

**Immunity for Good Samaritans.** “A person, who in good faith renders emergency care or assistance without compensation, shall not be liable for civil damages for acts or omissions occurring at the place of an emergency or accident or while the person is in transit to or from the emergency or accident or while the person is being moved to or from an emergency shelter unless such acts constitute recklessness. An emergency includes but is not limited to a disaster as defined in section 29C.2 or the period of time immediately following a disaster for which the governor has issued a proclamation of a disaster emergency pursuant to section 29C.6. (Iowa Code § 613.17)

**Immunity for Businesses and Others Providing Disaster Aid.** “A person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, who, during a public health disaster, in good faith and at the request of or under the direction of the department or the department of public defense renders emergency care or assistance to a victim of a public health disaster shall not be liable for civil damages for causing the death of or injury to a person, or for damage to property, unless such acts or omissions constitute recklessness.” (Iowa Code § 135.147)

**Immunity for State Volunteers.** “A person who performs services for the state government or any agency or subdivision of state government and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person’s duties, except for acts or omissions which involve the intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.” (Iowa Code § 669.24)

**Immunity for Reporting and Cooperating with a Disease**

**Investigation.** Any person who acts reasonably and in good faith in filing a disease report, releasing information, or otherwise cooperating with IDPH or a local health department or board in a disease investigation is immune from any liability, civil or criminal. (Iowa Code § 139A.3(2)(a)).

**Immunity for Compliance with a Vaccine Shortage Order.** “A health care provider, hospital, clinic, pharmacy, health care facility, local board of health, public health agency, or other person or entity that distributes or administers vaccines shall not be civilly liable in any action based on a failure or refusal to distribute or administer a vaccine to any person if the failure or refusal to distribute or administer the vaccine was consistent with a department order issued pursuant to” chapter 139A. (Iowa Code § 139A.8A)

**State Immunity for Damages Associated with Quarantine.** The state has not waived immunity from suit and liability for “any claim for damages caused by

the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.” (Iowa Code § 669.14(3)). Hence the state retains immunity against any claim for money damages resulting from issuing or enforcing a quarantine order.

**Immunity for Local Government.** Local governments (cities, counties, townships) are immune from claims “based upon or arising out of an act or omission in connection with an emergency response including but not limited to acts or omissions in connection with emergency response communication services.” (Iowa Code § 670.4(1)(k)).

**Federal Volunteer Protection Act.** This federal act generally provides that no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by the volunteer so long as the volunteer was acting within the scope of the person’s responsibilities, was properly licensed, and did not cause harm by willful or criminal misconduct, gross negligence, or reckless misconduct. (42 USCA Section 14503).

**Countermeasure Liability Legislation.** This federal act limits liability with respect to pandemic influenza and other public health emergencies. If the Secretary of DHHS has declared a public health emergency or the credible risk of such emergency, this statute eliminates liability for manufacturers, distributors, program planners, and person who prescribe, administer, or dispense a “covered countermeasure.” (Division C of P.L. 109-148 (2005), 42 USCA 247d).