

Communicable Disease Control Measures in Texas

A Guide for Health Authorities
in a Public Health Emergency

(Updated February 2007)



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Quick-Reference Contact List

STATE

Commissioner of State Health Services, Department of State
Health Services (DSHS) 1-888-963-7111
Governor's Office 1-800-843-5789
Office of General Counsel, DSHS, (512) 458-7236
Regional and Local Services, DSHS (512) 458-7770 (formerly the
Office of Public Health Practice)
Community Preparedness Section, DSHS, (512) 458-7219 (formerly
the Center for Public Health Preparedness and Response)

LOCAL

County Commissioner's Court
City Council
City Attorney
County Attorney
County Appraisal District

Information Available on the Internet

Texas Department of State Health Services
<<http://www.dshs.state.tx.us>>

Local Health Authority Information
<<http://www.dshs.state.tx.us/rls/lha/>>

Texas Legislature Online
<http://www.legis.state.tx.us/>

Electronic Version of this Manual
<http://www.dshs.state.tx.us/comp/ogc/cdmanual.shtm>

and

<http://www.dshs.state.tx.us/rls/lha/communicabledisease.shtm>



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.
COMMISSIONER

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Dear Health Authority:

This handbook is intended to assist you in carrying out your duties under the Communicable Disease Prevention and Control Act. Whether an outbreak of a communicable disease occurs from a natural biological event or terrorist act, the health and safety of citizens throughout the state of Texas may very well depend on the actions you take in your communities.

The Department of State Health Services relies on your medical judgment to order and enforce the best public health practices. Implementing control measures, such as individual or area quarantine, will require close coordination with your city, county, or district attorney, as well as law enforcement. You should share this handbook with them to use as a guide. You may customize the procedures to fit your community.

The February 2007 manual has been updated to reflect certain changes brought about by House Bill 2292 (78th Legislature, 2003), which abolished and reorganized the Texas Department of Health and 12 other health and human services agencies, effective September 1, 2004. The Department of State Health Services is an agency consolidated from the former Texas Department of Health, the mental health division of the former Texas Department of Mental Health and Mental Retardation, the former Texas Commission on Alcohol and Drug Abuse, and the former Texas Health Care Information Council. House Bill 2292 also abolished the governing boards of those agencies, including the Texas Board of Health. References to the Texas Department of Health and the Texas Board of Health have been deleted in the manual, except where they appear in statutory text. The manual also has been edited to reflect changes to Department of State Health Services organizational structure, relevant personnel titles, and website links. Other than those changes, the legal content of the manual and the control measures forms are current and did not require changes as of February 2007.

An electronic version of the manual, which includes forms that can be downloaded, is available on the Department of State Health Services website at <http://www.dshs.state.tx.us/comprep/ogc/cdmanual.pdf> or at <http://www.dshs.state.tx.us/rls/lha/communicabledisease.shtm>. You may also contact Regional and Local Health Services at 512/458-7770 for further information.

I hope you find this information useful. I appreciate your service to the people of Texas.

David L. Lakey, M.D.
Commissioner

Communicable Disease Control Measures in Texas

David L. Lakey, M.D.
Commissioner
Department of State Health Services

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Part One

General Introduction to the Imposition of Control Measures

The Communicable Disease Prevention and Control Act is a comprehensive statute — codified as Chapter 81, Texas Health and Safety Code — that provides for numerous control measures to be made available for use in protecting the public health, including detention, restriction, and quarantine.

Control measures are actions necessary to control and prevent communicable disease. They include, but are not limited to, immunization, detention, restriction, disinfection, decontamination, isolation, quarantine, disinfestation, chemoprophylaxis, preventive therapy, prevention, and education. *See §81.082.* However, the law does not limit control measures only to these measures. Texas law allows control measures to be imposed on individuals, property, areas, or common carriers.

The diagnosis of most serious communicable diseases is an occasion for the physician or other health-care worker to report the diagnosis to the local public health authority to comply with the Communicable Disease Prevention and Control Act and rules promulgated under its authority. The obligation to report diseases designated by the Department of State Health Services is important in assessing the prevalence and epidemiology of communicable diseases.

The health authority is an officer whose office and duties are defined by law. *See §§121.021–121.029, Health and Safety Code.* A local health authority has considerable power that allows the health authority to investigate suspected incidents and outbreaks of communicable disease. “[E]stablishing, maintaining, and enforcing quarantine in the health authority’s jurisdiction” is one of the local health authority’s explicit legal duties. *See §121.024(c)(1), Health and Safety Code.* A major responsibility of health authorities is their implementation of “control measures,” which may include quarantine. So far, quarantine in this state has been almost exclusively limited to noncompliant tuberculosis patients, although application of quarantine measures may be applied to any communicable disease when the situation warrants.

The Commissioner of State Health services (“commissioner”) has authority to impose control measures, either in the absence of, or in addition to, those of the local health authority. *See §§81.081 and 81.082(a).* However, it is imperative to read each statute carefully because

some statutes give the local health authority or local government different authority from that given to the department, or require different procedures to impose a control measure.

Non-compliance with a health authority's written order can subject an individual to court-ordered management under Chapter 81, Subchapter G, of the Health and Safety Code. The issuance of, delivery of, and exhibited non-compliance with this written order are prerequisites to institution of Subchapter G proceedings unless a public health disaster has been declared. *See §§81.083(e), 81.151(d), and 81.152(c)(4)*. The use of procedures involving court-ordered management is necessarily a cooperative effort between the public health entity charged with the control of communicable diseases and the city, county, or district attorney whose office represents the entity in legal matters. More often than not, the team will consist of the duly designated health authority for the jurisdiction, disease control personnel from the local health department, and the attorney assigned to represent them. The authority granted to, and the duties imposed upon, local health authorities by Subchapter G are also granted to the Department of State Health Services; however, actions under this subchapter are almost always commenced by local health authorities. *See §81.151(a)*.

The following parts of this manual are designed to assist local health authorities and the attorneys who represent them by providing guidance, sample forms and orders, and statutory reference materials. State law does not require you to use these forms; however, the forms will meet the requirements of Chapter 81.

All statutory references are to the Health and Safety Code unless stated otherwise.

Part Two

Special Update on Public Health Preparedness Laws

In 2003, the Texas Legislature enacted many laws that affect the state's approach to a bioterrorism event as well as communicable disease control.

Following is a summary of relevant laws enacted in 2003 that affect public health preparedness and measures for controlling communicable diseases:

- Government Code, Chapter 421, Homeland Security enacts a number of provisions related to homeland security.
- Government Code, Chapter 421 requires the governor to develop a statewide homeland security strategy that will coordinate homeland security activities among and between local, state, and federal agencies and the private sector and complement the federal homeland security strategy. It creates a Critical Infrastructure Protection Council that will provide suggestions to the governor for helping state and local agencies implement the strategy. A state or local agency or non-governmental entity performing a homeland security activity is required to cooperate with various entities. State and local agencies are required to inform the governor about homeland security funding actions and to make funding reports to the governor.
- Government Code, Chapter 421 also contains provisions making confidential certain information related to terrorism or related criminal activity under the Texas Disaster Act, Government Code, Chapter 418. The protections only apply to information collected, assembled, or maintained by or for a governmental entity. During a disaster, a governmental entity may voluntarily disclose all or part of the confidential information if the receiver has a legitimate need for it. In addition, the bill allows a governmental body to hold a closed meeting in order to deliberate about any of the above information.
- Government Code, Chapter 421 extends immunity from civil liability to an officer or employee of a state or local agency or a volunteer performing a homeland security activity at the request or under the direction of a state or local agency. The bill also extends immunity from civil liability to a state or local agency that furnishes a service related to homeland security activity under an inter-local contract.

- Government Code, Chapter 421 also requires pharmacists to report any unusual or increased prescription rates, unusual types of prescriptions or unusual trends in pharmacy visits that may be caused by bioterrorism, epidemic, or pandemic disease, or novel and highly fatal infectious agents or biological toxins that might pose a substantial risk of a significant number of human deaths or incidents of permanent or long-term disability. The bill amends §81.042(e) to require disease reporting by emergency medical service personnel, a peace officer, or a firefighter.
- *Health and Safety Code, Chapter 508, Area Quarantine for Environmental or Toxic Agent, House Bill 627* (Chapter 1022, 78th Leg., 2003) allows the commissioner or local health authority to impose an area quarantine similar to that approved for communicable disease outbreaks (§81.085) if they determine that the introduction of an environmental or toxic agent into the environment has occurred. The area quarantine must be accomplished by the least restrictive means necessary to protect the public health and has a limited period of effectiveness. Chapter 508 is discussed in more detail in Part Five: Control Measures for Area.
- *House Bill 2292* (Chapter 198, 78th Leg., 2003) is a lengthy bill that affects many areas of public health preparedness, measures for controlling communicable diseases, and Texas government reorganization. Sections 2.167 through 2.191 of HB 2292 amended several provisions.
- It is important to realize that the amended provisions must be read in the context of the rest of Chapter 81. The bill's definitions clarify that a health authority or the commissioner may have a designee who exercises powers or duties related to communicable diseases, particularly in a public health disaster. By appointing a designee before any event occurs, a health authority or the commissioner will ensure that an appropriate person will be available to take any necessary and legal action to control communicable disease outbreaks and issue emergency orders if the actual health authority or commissioner is unavailable.
- Health and Safety Code §81.003, as amended by HB 2292 defines "public health disaster" as requiring the governor's declaration of a state of disaster and the commissioner's determination of an immediate threat from communicable disease with a high risk of death or serious long-term disability to a large number of people or with a substantial risk of public exposure due to the disease's high level of contagion or the method of transmission. A public health disaster may continue for no more than 30 days with one 30-day renewal and the governor may terminate a declaration of a public health disaster at any time.

The declaration of a public health disaster acts as a trigger for some of the following provisions of Health and Safety Code, Chapter 81 as amended by HB 2292:

- it allows the commissioner to require reports of communicable disease or other health conditions without a rule in a public health disaster;
- allows the release of information to law enforcement personnel during a public health disaster solely for protecting the health or life of a person;
- authorizes the commissioner or health authority to more expeditiously request a court order to impose control measures on an individual in a public health disaster (if that individual does not voluntarily comply);
- allows control measures to be more expeditiously imposed on property in a public health disaster;
- allows the commissioner to impose an area quarantine if communicable disease is suspected in order to determine whether there is an actual outbreak (prior law allowed this only if there were an outbreak);
- requires a health authority imposing an area quarantine to notify and consult with the authority's city council, commissioners court, or both as soon as practical;
- during a public health disaster, requires an individual to disclose that person's immunization information to DSHS and authorizes DSHS to take appropriate action during area quarantine to protect that individual and the public; and

Declaration of a public health disaster also:

- prohibits a justice of the peace from ordering an autopsy and states that a medical examiner is not required to perform an autopsy when death was caused by a communicable disease during a public health disaster and allows the commissioner to designate diseases during a public health disaster for which waiting 48 hours before cremation would not be required. See Code of Criminal Procedure, Art. 49.25, §§ 10 and 10a.

Many of these provisions address the delegation of, or affect the authority for, executing or implementing emergency public health measures by revising the existing law as follows:

- To allow faster action during a public health disaster to obtain court orders for control measures on individuals. Previous law required delivery of a notice of control measures to the individual and disobedience by the individual of the notice before the commissioner or health authority could request a court order to impose control measures. HB 2292 amended Chapter 81 so that in a public health disaster the commissioner or health authority may go directly to a court to ask the court to order appropriate control measures.

- To allow faster action during a public health disaster to impose control measures on property. Previous law required a notice and an order to impose measures on property. Under Chapter 81 as amended by HB 2292, a notice would not be required in a public health disaster.
 - To allow a local health authority to impose an area quarantine without first receiving approval of the authority's governing body, a city council or commissioners court; approval would legally require the posting of a meeting at least two hours in advance, a quorum of members gathered, and a vote of the majority. Under Chapter 81 as amended by HB 2292, a health authority must inform and consult with the city council and commissioners court as soon as practical, but need not wait for a meeting and vote.
 - To allow the commissioner to impose an area quarantine if communicable disease is suspected, not just when there is an actual outbreak. During the time that may be necessary to determine if there is an actual outbreak, this authority allows necessary and immediate action to restrict activities in an area where disease is suspected while appropriate investigation is done to determine if there is an actual outbreak.
 - To allow the commissioner, during a public health disaster, to require reports of communicable disease or other health conditions from physicians, laboratories, hospitals, and other providers without a rule of the board. This delegation of authority to the commissioner will allow immediate requirement of certain reports without the lengthy process of rulemaking.
-
- Health and Safety Code § 81.095, amended in Senate Bill 401 (Chapter 835, 78th Leg., 2003) makes only the volunteer's or employee's organization responsible for paying the costs of testing for emergency services personnel, firefighters, peace officers, or first responders in the case of accidental exposure during an emergency.
 - Health and Safety Code § 81.211, added by Senate Bill 1024 (Chapter 107, 78th Leg., 2003) allows court orders to be filed and enforced appropriately for any person admitted to a DSHS hospital who is not a resident of Texas.

Part Three

Control Measures for Individuals

General Information

Control measures may be implemented whenever the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease. The imposition of control measures on individuals is a process, which, though not common, has been used in this state, mainly in cases of tuberculosis. The statutes under discussion here deal mainly with the recalcitrant patient and involuntary treatment situations, but the vast majority of patients will be cooperative, and these methods will be unnecessary.

If a communicable disease is properly reported, the local health authority should be aware of the individual's infection within a week of diagnosis [25 TAC §97.4(a)(5)]. Often it will be diagnosed in a public health setting and the health-care workers in that setting may have some knowledge of, and medical records for, the infected person. The question of when the health authority should consider "control measures" for the infected person will vary with a number of factors that need not be listed here, but the fact or likelihood of the person's noncompliance with medical advice is a key consideration. From a strictly legal standpoint, and depending on the patient, there is no reason at the moment of diagnosis that the physician or health authority could not make the patient aware of the possibility of quarantine — by counseling the patient and, most importantly from a legal perspective, giving him a written order to implement control measures. *See §81.083(c).*

Almost any necessary measure could be implemented as a control measure. Section 81.082(d) lists 12 options, but it is not exhaustive. Detention, restriction, isolation, and quarantine are among the options provided to the health authority in the statute. In most circumstances, to restrict a person's freedom on the basis of the health authority's determination alone would raise serious questions of due process, and no health authority should attempt these or similar measures of confinement without consulting legal counsel.

The first step is the execution and delivery of an order from the health authority or the department to an individual. This order may be issued if the health authority or the department "has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease." The order is meant to inform and instruct the individual on the "control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of disease in this state" [§81.083(b)].

The order must be in writing and delivered *in person* or by *registered* or *certified mail* to the individual (or his or her parents or guardian if a minor) [§81.083(c)]. The law does not require any particular form of an order; however, the order should identify the individual clearly and articulate the control measures that are being ordered. The articulated control measures may require swift compliance and, in an emergency, probably would be so required. The department has developed a form for an order and included it in this manual. The sample form is to be used as a guide; however, local health authorities are encouraged to make any changes or additions deemed necessary. State law does establish an exception to the requirement to issue an order in case of a public health disaster [§81.083(e)].

Typically, the order given to a patient could require him to report at certain times and places to take medication under the direct observation of health department employees, or to avoid certain activities in confined areas or other mandates “necessary to reduce morbidity and mortality.” *See 25 TAC §97.8(3)*. The exact contents of the order are a matter for the health authority or other medical staff to determine based upon the individual patient’s diagnosis and prognosis. Once the contents of the order are decided, they should be put “in writing and be delivered personally or by registered or certified mail to the individual or to the individual’s parent, legal guardian, or managing conservator if the individual is a minor.” *See §81.083(c)*. By law, the order “is effective until the individual is no longer infected with a communicable disease or, in the case of a suspected disease, expiration of the longest usual incubation period for the disease.” *See §81.083(d)*.

The directive to deliver the order to the parents of a minor conforms with the long standing “traditional common law view that a minor cannot consent to medical or surgical treatment” [Fay A. Rozovsky, *Consent to Treatment: A Practical Guide*, Section 5.1 (2nd ed., 1990)] and a Texas law which proclaims that the parent of a minor has “the right to consent to ... medical and surgical treatment.” *See Tex. Fam. Code §151.001(a)(6)*. However, this law is subject to a number of exceptions. The Family Code [§32.003(a)(3)] provides:

A child may consent to medical, dental, psychological, and surgical treatment for the child by a licensed physician or dentist if the child ... consents to the diagnosis and treatment of an infectious, contagious or communicable disease that is required by law or a rule to be reported by the licensed physician or dentist to a local health officer or the department, including all diseases within the scope of Section 81.041, Health and Safety Code.

[Other subsections of this statute give other circumstances when minors may consent to their own medical care, e.g. when they are 16 or older and managing their own affairs. *See §32.003(a)*.]

This section of the Texas Family Code encourages minors to come forward and seek treatment on their own for medical conditions that they may not want their parents to know about, and allows health-care professionals to treat them without obtaining the consent of parents or others. Although there is discordance between the provisions of the Health and Safety Code and the Family Code, there is no contradiction. The health-care professional who relies upon the Family Code to treat the minor without the consent of the parent may still inform the parent if the professional thinks it is advisable. *See Tex. Fam. Code §32.003(d)*. Since the Health and Safety Code requires the order to be delivered to the parents, this would be such an occasion. However, we suggest that, if the health-care provider has until that time been dealing exclusively with the minor, a duplicate set of the orders should also be presented to the minor so that there is no misunderstanding by either the minor or the parent.

Once the order is delivered, it becomes legally valid and binding on those persons to whom it is addressed. [The one exemption is for “an individual who chooses treatment by prayer or spiritual means as part of the tenets and practices of a recognized church of which the individual is an adherent or member.” This exemption is only partial if the individual is “in isolation or quarantine.” *See §81.009(a)*.]

The health authority’s duties are important because they are a precondition to further legal proceedings. If a patient continues to be noncompliant after the health authority has issued the warning letter, it may be necessary to treat him without his consent. That will require the involvement of the court system. When infectious individuals do not comply with the orders of a health authority or when a public health disaster exists, Subchapter G of Chapter 81 provides for penalties and management of the individuals under court order. With the resurgence of tuberculosis in this state, the use of these procedures by city, county, and district attorneys — working with local health authorities and the Department of State Health Services to insure the isolation and detention of non-compliant infectious individuals — has increased significantly. The Office of General Counsel of the Department of State Health Services will continue to provide assistance in these matters; this document is intended to provide a compilation of materials for use when implementing control measures.

Criminal sanctions are one means of enforcing the order. “A person commits an offense if the person knowingly refuses to perform or allow the performance of certain control measures ordered by a health authority or the department under Sections 81.083–81.086. An offense under this section is a Class B misdemeanor.” *See §81.087*. A Class B misdemeanor is punishable by a fine of up to \$2,000, a jail term of up to 180 days, or both. *See Penal Code §12.22*. A jail sentence would usually be

inappropriate for a person with infectious disease, but this statute might be applicable to others who attempt to prevent the performance of control measures. Other criminal statutes apply to persons who use coercion, threats, or other illegal means against public servants performing their duties. *See Penal Code §§36.03, 36.06.* To use these criminal statutes, the public health authority should contact the local district or city attorney, whose cooperation is essential to filing this type of charge.

The second method of enforcing the order is by means of “court orders for management of persons with communicable diseases.” The Office of General Counsel of the Department of State Health Services has sample court orders; however, the public health authority should contact the local district or city attorney, whose cooperation is essential to filing such documents.

Instructions for preparing health authority orders

Texas law allows control measures to be implemented whenever the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease.

The order must be in writing and delivered *personally* or by *registered or certified mail*.

STEPS:

1. Read §§81.082 and 81.083 carefully. Determine that you have reasonable cause to believe the conditions in §81.083(b) exist.
2. Consult with your city, county, or district attorney on the statutory requirements.
3. If necessary, consult with a staff communicable disease expert or the state epidemiologist [(512) 458-7219] to determine appropriate control measures.
4. Using the following sample, draft and deliver the order as directed above.

HEALTH AUTHORITY ORDER

TO: *(name of individual, parent, legal guardian or managing conservator)*

FROM: *(name of health authority)*

DATE: *(today's date)*

(Name of health authority) finds that *(name of individual)* is within my jurisdiction and has reasonable cause to believe that *(name of individual)* is ill with, has been exposed to, or is the carrier of a communicable disease, *(name of disease: include scientific and common names)*.

The *(name of health authority)* finds control measures are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in the State of Texas. By authority of Section 81.083 of the Texas Health and Safety Code, *(name of health authority)* ORDERS that *(name of individual)* immediately:

be subject to **(any control measure that is reasonable and necessary to prevent the introduction, transmission, or spread of the disease in this state, including but not limited to:)**

(CHOOSE AND INCLUDE ONE OR ALL THAT APPLY FROM BELOW)

1. being immunized with *(name of vaccine)*.
2. being detained until *(name of individual)*:
 - [Choose (a) or (b)]
 - a. is no longer infected with *(common name of disease)*.
 - b. the longest period of incubation for *(common name of disease)* or *(number of days of longest incubation period of disease has expired)*.
3. being restricted to *(area or place of restriction)*, i.e. his/her residence, institution, or current residential location at *(complete physical address)*.
4. being disinfected for *(common name of disease)* by *(name of disinfecting ingredient or process)*.
5. being decontaminated by *(name of process)*.
6. being isolated to *[exact area or physical address of place of isolation or name(s) of person(s) to be isolated from]*.

7. being quarantined by admission to (*name of institution*) at (*complete physical address*).
8. being disinfected by (*name of process of disinfestations*).
9. receiving chemoprophylaxis by (*name of process or chemoprophylactic agent*).
10. receiving preventive therapy by (*name of therapy*).
11. receiving prevention by (*name of method of prevention*).
12. receiving education by (*name of disease and of the educational course and date, time and complete physical address if applicable*).

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE AND COULD RESULT IN CONFINEMENT FOR 180 DAYS, A FINE OF \$2,000, OR BOTH. VIOLATION OF THIS ORDER COULD ALSO RESULT IN COURT ORDERED MANAGEMENT, WHICH MAY INCLUDE INVOLUNTARY INCARCERATION IN A TREATMENT FACILITY OR OTHER LOCATION AS DETERMINED BY THE COURT.

Signature: _____

Date: _____

Printed name: _____

Physical address: _____

Mailing address: _____

Telephone: _____

E-mail: _____

Fax: _____

No. _____

THE STATE OF TEXAS § IN THE _____ DISTRICT COURT
 FOR THE BEST INTEREST §
 AND PROTECTION OF § IN AND FOR
 §
 _____ § _____ COUNTY, TEXAS

HEALTH AUTHORITY'S AFFIDAVIT OF MEDICAL EVALUATION

I, the undersigned, a local health authority in the State of Texas, under the Texas Health and Safety Code, Section 121.021, do hereby certify to the best of my knowledge:

1. The name and address of the physician that examined the proposed patient are:
 _____.
2. The name and address of the proposed patient are:
 _____.
3. On the _____ day of _____, 20____, the proposed patient was examined at the following location: _____.
4. A brief diagnosis of the physical and mental condition of the proposed patient on said date is: the proposed patient has a contagious form of (*name of disease*) and is refusing medical treatment.
5. An accurate description of the health treatment, if any, given by or administered by the examining physician is as follows: *See Exhibit _____, which is attached hereto and incorporated by reference.*
6. I am of the opinion that the proposed patient is infected with a communicable disease that presents a threat to the public health, and as a result of that communicable disease, the proposed patient is likely to cause serious harm to himself, and will if not observed, isolated, and treated, continue to endanger the public health. The detailed basis for this opinion is as follows: the proposed patient is infected with (*name of disease*). (*Detailed information and reasoning.*)
7. I am further of the opinion that the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained. The detailed basis for this opinion being: *See Exhibit ____ which is attached hereto and is incorporated by reference.*

8. **(NOTE: COMPLETE THIS ITEM ONLY IF THIS CERTIFICATE IS TO BE OFFERED IN SUPPORT OF EXTENDED ORDERS (OVER 90 DAYS) FOR THE MANAGEMENT OF A PERSON WITH A COMMUNICABLE DISEASE.)**

I am further of the opinion that the proposed patient's condition is expected to continue for more than 90 days. The detailed basis for that opinion is as follows:

Opinion of _____ . See Exhibit _____ which is attached hereto and is incorporated by reference.

Signed: _____
Health Authority

SUBSCRIBED AND SWORN TO before me on this _____ day of _____, 20_____.

Notary Public, _____ County, Texas

My commission expires: _____

No. _____

THE STATE OF TEXAS	§	IN THE _____ DISTRICT COURT
FOR THE BEST INTEREST	§	
AND PROTECTION OF	§	IN AND FOR
_____	§	
	§	_____ COUNTY, TEXAS

COMMISSIONER’S DESIGNATION OF HEALTH FACILITY

Pursuant to Chapter 81 of the *Texas Health and Safety Code*, the undersigned Commissioner of the Department of State Health Services of the State of Texas, does hereby designate the following appropriate in-patient health facility as a suitable place for detention of the person who is the subject of this suit.

Done at _____, County, Texas, on this the _____ day of _____, 20_____.

Commissioner
Department of State Health Services

Part Four

Control Measures for Property

General information

Control measures for property can be used when a local health authority has reasonable cause to believe that property in his or her jurisdiction is or may be infected or contaminated with a communicable disease. Property means an object; a parcel of land; or a structure, animal, or other property on a parcel of land.

If the situation warrants the imposition of control measures for property, review §81.084 relating to the application of control measures to property. Also review §81.003, which defines “communicable disease” and other terms, and §81.082, relating to the administration of control measures. Note that the control measures articulated in the latter section are not an exclusive list of control measures that may be imposed.

Assuming the necessity of a Notice to Person Who Owns or Controls Property: Quarantine of Property (Notice), determine the name and address of the person who owns or controls the property. Ownership may be determined by contacting the county appraisal district. The person in control of the property may be more difficult to determine, particularly if the building is leased to different tenants. In that case the person in control of the property may be a management company or an individual manager, if there is one. The person who owns or controls the property may be an individual or some type of business entity. If the owner or person in control is a Texas corporation, you may determine the corporation’s registered agent and registered office by calling the Office of the Secretary of State at (512) 463-5555 or (512) 463-5701. In the case of a corporation, the notice should be issued to the registered agent at the registered office. If you find out later that you issued the notice to the wrong person, issue a new notice to the correct person.

If it is necessary for a medical examination or technical analysis of samples to be taken from the property to determine if the property is infected or contaminated, you should issue a Notice. An example of a Notice is included in this part. If the property owner is and will continue to be fully cooperative, you may determine that a Notice is not required; however, if you may need to issue the Order of Control Measures to be Imposed on Property in the future, you must first issue a Notice. In the Notice, you may also order and describe the medical examination or technical analysis of samples in more detail if you wish to do so. You may include an estimate of the time required for performing the medical examination or technical analysis of samples. In an emergency, the time frame may be very short.

The law allows you to tag an object for identification of possible infection or contamination. You must describe any object tagged.

No further approvals are necessary before you issue the notice. For example, there is no requirement for approval by the Department of State Health Services, a city council, a county commissioners court, or a court of law.

You should perform or arrange for the performance of the medical examination or technical analysis of samples from the property to determine whether the property is infected or contaminated. Please consult with the department's state epidemiologist as needed for your examination or analysis. Coordination between your office and the department will be crucial.

Texas law requires the department or health authority to send the Notice by registered or certified mail or by personal delivery. If the property is "land or a structure or an animal or other property on the land," the Notice must be posted on the land and "at a place convenient to the public in the county courthouse." §81.084(b). If the property is infected as a result of a public health disaster declared by the governor and the commissioner, the law does not require a health authority to provide the Notice by any means.

Notify your local law enforcement agency of any need that you have or foresee for security of the property or for enhancing your ability to perform the medical examination or analysis of samples. Share this manual with law enforcement personnel in order to assist them in developing a better understanding of the criminal offenses described in this manual.

After investigation, if you determine that the property is not infected or contaminated, you must remove the quarantine and return control of the property to the person who owns or controls it. There is no formal written document required in order to do this; however, it is recommended that you document removal of the quarantine and return control of the property at least through a brief letter to the owner or person in control.

If the property is found to be infected or contaminated, the Order of Control Measures to be Imposed on Property would be the next step.

Instructions on the use of the Notice to Person Who Owns or Controls Property: Quarantine of Property

1. Read §81.084 carefully. Determine that you have reasonable cause to believe that property in your jurisdiction is or may be infected or contaminated with a communicable disease. Note that you do not have to be absolutely sure that a communicable disease exists, but you must have reasonable cause to believe that it may exist.
2. Consult with your city, county, or district attorney on the statutory requirements.
3. If necessary, consult with Department of State Health Services personnel relating to communicable disease issues or procedures. Contact the state epidemiologist, Department of State Health Services at (512) 458-7219 — fax (512) 458-7472. The department has the same authority as you to issue a notice to quarantine property and you and the department may agree that quarantine by the department is appropriate in a specific situation.
4. Using the attached sample, draft and deliver the Notice by sending a copy of the Notice by registered or certified mail to the person to whom the Notice is addressed or, alternatively, hand-delivering a copy of the Notice to the person. There is no requirement that your actions in executing the Notice must wait until the Notice is received by that person. Keep the original Notice for your files. You may distribute copies of the Notice as needed to law enforcement authorities or other appropriate persons. If the property is land, or a structure or an animal or other property on the land, post the Notice on the land in a reasonably visible location and post the Notice in a place convenient to the public in the county courthouse.
5. If a public health disaster exists (which requires a declaration by the governor and a determination by the commissioner), the Notice is not required. You may proceed directly to issuance of the Order of Control Measures to Be Imposed on Property.

**NOTICE TO PERSON WHO OWNS OR CONTROLS PROPERTY:
QUARANTINE OF PROPERTY**

TO: *(name and address of property owner, person in control of
the property, or registered agent)*
FROM: *(name of health authority)*
DATE: *(today's date)*

This notice is issued under the Texas Health and Safety Code, §81.084, relating to the application of control measures to property. I am the local health authority for *(name of county, city, and/or public health district for the city or county)*. As the local health authority, I am authorized by law to issue this notice.

Based on information available, you have been identified as the:
(CHOOSE AND INCLUDE ONE OR ALL THAT APPLY FROM BELOW)

1. owner
2. person in control
3. registered agent for the corporate owner
4. registered agent for the corporate person in control

of the following property located within *(name of county, city, and/or public health district for the city or county)*:

*(property description — include one of the following:
legal description by the appraisal district for real
property; or
street address for real property; or
specific street boundaries for real property; or
other descriptive language for real property; or
adequate description of objects other than real
property)*

As the local health authority, I have reasonable cause to believe that the described property is or may be infected or contaminated with a communicable disease, *(scientific and common name of disease)* which is *(description of disease and/or additional information)*.

The property described above is hereby placed in quarantine for the period of time necessary for a medical examination or technical analysis of samples taken from the property to determine if the property is infected or contaminated. The examination or analysis will be performed by my office or under the direction of my office. The Department of State Health Services may also be involved in the examination or analysis. You are not required to perform the examination or analysis. You will not be required to pay for the examination or analysis.

(INCLUDE THE FOLLOWING IF APPROPRIATE)

In addition, I have tagged or will shortly tag the following object(s) for identification of possible infection or contamination: (*identify objects*).

You must cooperate in allowing this notice to be put into effect. If the property is not infected or contaminated, the quarantine shall be removed and control of the property will be returned to you. If the property is found to be infected or contaminated, I will issue a written order under which control measures to disinfect or decontaminate the property, to secure the property, or to destroy the property may be required.

(INCLUDE THE FOLLOWING IF APPROPRIATE)

All ingress to and egress from the property is forbidden, except for authorized health and law enforcement personnel.

[INCLUDE THE FOLLOWING IF THE PROPERTY IS REAL PROPERTY (LAND) OR A STRUCTURE OR AN ANIMAL OR OTHER PROPERTY ON LAND]

This notice shall be posted on the land and at a place convenient to the public in the courthouse for (*name of county*).

There are penalties for noncompliance with this notice.

IT IS A CRIME TO KNOWINGLY REFUSE TO PERFORM OR ALLOW THE PERFORMANCE OF CONTROL MEASURES ON PROPERTY AS ORDERED BY A LOCAL HEALTH AUTHORITY OR THE DEPARTMENT OF STATE HEALTH SERVICES OR TO KNOWINGLY CONCEAL AN INFECTED OBJECT THAT IS THE SUBJECT OF AN INVESTIGATION BY EITHER. BOTH CRIMES ARE CLASS B MISDEMEANORS AND COULD RESULT IN UP TO 180 DAYS IN JAIL AND/OR A FINE OF UP TO \$2,000.

If you have any questions, please contact (*name of health authority*) at/by (*means of contact*).

This notice is issued under my authority as the local health authority for (*name of county, city, and/or public health district for the city or county*).

(INCLUDE THE FOLLOWING ONLY IF NOTICE IS ISSUED BY DSHS REGIONAL DIRECTOR)

This notice is issued under my authority as the Department of State Health Services regional director for the region that encompasses the described property. I am authorized by law to perform the duties of the local health authority because there is no appointed local health authority for the jurisdiction that includes the property.

Signature: _____

Date: _____

Printed name: _____

Physical address: _____

Mailing address: _____

Telephone: _____

E-mail: _____

Fax: _____

Instructions on use of the Order of Control Measures to Be Imposed on Property

If you determine that property previously addressed in a Notice to Person Who Owns or Controls Property: Quarantine of Property is infected or contaminated with a communicable disease, by written order you may require the person who owns or controls the property to impose technically feasible control measures to disinfect or decontaminate the property. If no technically feasible control measure is available, you may order the person who owns or controls the property to do certain things to secure or destroy the property. In addition, if you have issued one Order of Control Measures to Be Imposed on the property and those control measures have been ineffective, you may issue a further order to destroy the property or secure it. If the property to which this order will apply is less than all of the property included in the original notice, you should describe adequately the property to which the order will apply.

The following form may be used under any of these circumstances. Send a copy of the order by registered or certified mail to the person to whom the order is addressed or hand-deliver a copy to that person. Be sure to include the previous notice as an attachment to the order. You will not be able to enforce any requirement for the person to perform control measures until the person actually receives a copy of the order. Keep the original order for your files. You may distribute copies of the order as needed to law enforcement authorities or other appropriate persons.

If you have reason to believe that the property is or may be infected or contaminated with a communicable disease that presents an immediate threat to the public health, and a person has failed or refused to comply with an order from you, you may petition a county or district court of the county in which the property is located for orders necessary for public health. There is no specific form required for petitioning the court. Your city, county, or district attorney should be able to draft a petition for a temporary restraining order citing the reasonable belief that the property may be infected with a communicable disease, the immediate threat to the public health, and the prior order.

STEPS:

1. Make sure that you continue to be aware of the provisions in §81.084 relating to the application of control measures to property and the other provisions cited in the instructions on the notice. Make sure you issued the proper notice. In an emergency situation, it is possible that the notice and any previous order may have been issued very shortly before this order, e.g., earlier in the same day.
2. Consult with your city, county, or district attorney regarding the statutory requirements.
3. If necessary, consult with a staff communicable disease expert or the state epidemiologist [(512) 458-7219] to determine appropriate control measures.
4. Using the following sample, draft and deliver the order as described above.

ORDER OF CONTROL MEASURES TO BE IMPOSED ON PROPERTY

TO: *(name and address of property owner, person in control of the property, or registered agent)*
FROM: *(name of health authority)*
DATE: *(today's date)*

This order is issued under the Texas Health and Safety Code, §81.084, relating to the application of control measures to property. I am the local health authority for *(name of county, city, and/or public health district for the city or county)*. As the local health authority, I am authorized by law to issue this order.

You have previously been issued a Notice of the quarantine of certain property for which you are the (**CHOOSE ONE:** *property owner, person in control of the property, or registered agent*) of the property. A copy of the Notice, including the property description, is attached and made a part of this order.

A medical examination or technical analysis of samples taken from the described property has been performed. The property has been found to be infected or contaminated with a communicable disease. Specifically, *(name of disease: include scientific and common name and information relating to the infection or contamination)*.

(CHOOSE 1 OR 2 FROM THE FOLLOWING)

1. You are ordered to impose the following control measures that are technically feasible to disinfect or decontaminate the property: *(description of control measures which the person is required to impose)*. You are required to put these control measures into place or ensure that they are put into place. You are required to pay for these control measures except as follows: *(description of any control measures which the city, county, district, or other entity will conduct or fund)*.

If the control measures are effective, this quarantine shall be removed and control of the property will be returned to you. If the control measures are ineffective or if it is determined that there is not a technically feasible control measure available for use, further orders, including court orders, may be issued. A court order may also be issued if there is an immediate threat to the public health.

2. It has been determined that there is not a technically feasible control measure available for use to disinfect or decontaminate the property or the control measures previously ordered for this property have been ineffective. Therefore, the quarantine is continued and you are ordered to do the following:

(CHOOSE AND INCLUDE ONE OR ALL THAT APPLY FROM BELOW)

- (A) To destroy the property in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination by the following means: (*name of process and/or description of process*).
- (B) To securely fence the entire perimeter of the property.
- (C) To securely fence the following part of the property: (*exact area to be fenced*).
- (D) To securely seal off the following infected or contaminated structure or other property on the described property to prevent entry into the infected or contaminated area until the quarantine is removed: (*adequate description of structure or other property*).

You are required to put these control measures into place or ensure that they are put into place. You are required to pay for these control measures except as follows: (*description of any control measures which the city, county, district, or other entity will conduct or fund*).

There are penalties for noncompliance with this order. You may be assessed all expenses of implementing control measures, court costs, and other justifiable expenses. You may be assessed expenses for the costs of control measures performed by the Department of State Health Services's or the local health authority's employees. No assessment of such costs or expenses is being made at this time.

Criminal penalties are also possible.

IT IS A CRIME TO KNOWINGLY REFUSE TO PERFORM OR TO ALLOW THE PERFORMANCE OF CONTROL MEASURES ON PROPERTY AS ORDERED BY A LOCAL HEALTH AUTHORITY OR THE DEPARTMENT OF STATE HEALTH SERVICES OR TO KNOWINGLY CONCEAL AN INFECTED OBJECT THAT IS THE SUBJECT OF AN INVESTIGATION BY EITHER. BOTH CRIMES ARE CLASS B MISDEMEANORS AND COULD RESULT IN UP TO 180 DAYS IN JAIL AND/OR A FINE OF UP TO \$2,000.

If you have any questions, please contact (*name of health authority*) at/by (*means of contact*).

This order is issued under my authority as the local health authority for the (*name of county, city, and/or public health district for the city or county*).

**(INCLUDE THE FOLLOWING ONLY IF ORDER IS ISSUED BY DSHS
REGIONAL DIRECTOR)**

This order is issued under my authority as the Department of State Health Services regional director for the region that encompasses the described property. I am authorized by law to perform the duties of the local health authority because there is no appointed local health authority for the jurisdiction that includes the property.

Signature: _____

Date: _____

Printed name: _____

Physical address: _____

Mailing address: _____

Telephone: _____

E-mail: _____

Fax: _____

Part Five

Control Measures for Area

General Information

The isolation of a city, a county, or a portion of such a political subdivision may be necessary where there is an outbreak of communicable disease in a finite geographic area. Section 81.085 addresses control measures for an area. There is an overlap in authority between the local health authority and the department. Thus, there are some things that either the commissioner of health or a local health authority might do. The health authority and the department may agree that a commissioner's order would be more appropriate in a specific situation. Similarly, the governor has broad authority under the Texas Disaster Act to take steps that will address an emergency. The governor has some authority to carry out actions the public health sector cannot. Therefore, there is reason for careful coordination between all persons and entities involved in addressing a communicable disease emergency.

An Order Declaring an Area Quarantine may be used when a local health authority determines that an outbreak of communicable disease has occurred in the state and that an area within the health authority's jurisdiction is affected by the outbreak. The law does not explain what is meant by the term "affected." The statute does not say that the outbreak must have actually occurred in the area to be quarantined; it simply requires that the area be somehow affected by the outbreak. A health authority issuing this order should be prepared to justify his or her decision that the quarantined area was affected by the outbreak.

The commissioner, but not a health authority, may impose an area quarantine if the commissioner has reasonable cause to believe that individuals or property in the area may be infected or contaminated with a communicable disease, for the period necessary to determine whether an outbreak has occurred. If it is determined that an outbreak has occurred, then the health authority or commissioner may issue the order.

The area to be quarantined must be within the boundaries of the city, county, or district of the local health authority. The area to be quarantined could encompass property owned by different property owners. If an area outside the health authority's jurisdiction is affected by an outbreak, that health authority should contact the local health authority in the adjacent jurisdiction or the state epidemiologist so that activities can be coordinated across different jurisdictions.

A health authority may not impose an area quarantine (i.e., execute the order) until after he or she has consulted with the department. This consultation may be oral or in writing. After execution of the order,

the health authority must give written notice to, and consult with, the governing body of “each county and municipality in the health authority’s jurisdiction that has territory in the affected area as soon as practicable.” See §81.085(b). The requirement to consult with or notify does not require approval of the order itself.

The health authority must publish, at least once each week during the area quarantine period in a newspaper of general circulation in the area, a notice of the order and any further instructions with a brief explanation of their meaning and effect. Notice by publication is sufficient to inform persons in the area of their rights, duties, and obligations under your orders or instructions.

A health authority should keep the original order. The health authority may distribute copies of the order as needed to persons in the quarantine area, law enforcement authorities, or appropriate persons. The health authority should monitor the performance of the necessary control measures and perform other duties necessary to address the communicable disease outbreak.

After execution and publication of the order, the health authority may decide that additional control measures need to be imposed. The law does not require the issuance of a second order, but instructions regarding those additional control measures should be in writing so that appropriate notice can be given to persons affected.

If it is determined that an area quarantine is no longer necessary, the health authority must first obtain the consent of the commissioner of health. Approval by the city council or county commissioners court is not required.

When the area quarantine is terminated, the health authority may publish a notice in a local area newspaper or otherwise notify persons in any manner.

Update

Chapter 508, Health and Safety Code, was added by the legislature in 2003 with the passage of House Bill 627. Chapter 508 gives health authorities or the commissioner power to impose an area quarantine if either determines that an environmental or toxic agent has been introduced into the environment. “Environmental or toxic agent” includes a disease-producing organism, toxic substance, radioactive substance, or hazardous substance. The area quarantine would be similar to that approved for a communicable disease area quarantine. A criminal penalty (third degree felony) for violation of an area quarantine is established. Chapter 508 also requires that an area quarantine be accomplished by the least restrictive means necessary.

While the commissioner and health authorities previously had the legal authority to impose an area quarantine for a communicable disease outbreak, authority for an area quarantine was not well defined for toxic, radioactive, or other hazardous substances. State officials at the Department of State Health Services and the Texas Commission on Environmental Quality have had legal authority to address spills, releases, or other incidents involving these substances and hazards, but authority for local jurisdictions was not specific until HB 627 was passed. The Order Declaring an Area Quarantine in this manual may be modified to address area quarantines due to other substances and hazards.

An area quarantine imposed by a local health authority expires on the earlier of: the 24th hour after the area quarantine is imposed, termination or superseding action taken under the governor’s declaration of a state of disaster, or superseding action taken by the commissioner to declare an area quarantine.

Instructions on the use of the Order Declaring an Area Quarantine

Texas law allows control measures to be implemented whenever the department or a health authority determines that an outbreak of a communicable disease has occurred in the state and that an area within the health authority's jurisdiction is affected by the outbreak. The Texas Administrative Code equates the term "outbreak" with "epidemic" and defines it as 'the occurrence in a community or region of a group of illnesses of similar nature, clearly in excess of normal expectancy, and derived from a common or a propagated source.' See 25 T.A.C. §97.1(11), (16).

You may use all reasonable means of communication to inform persons in the quarantine area of your order and instructions during the period of area quarantine. There is no requirement to notify individual property owners, although that is recommended.

You must publish, at least once each week during the area quarantine period in a newspaper of general circulation in the area, a notice of the order and any further instructions with a brief explanation of their meaning and effect. Notice by publication is sufficient to inform persons in the area of their rights, duties, and obligations under your orders or instructions.

STEPS:

Read §81.085 relating to area quarantine. Review §81.003, which defines "communicable disease" and other terms, and §81.082, relating to the administration of control measures. Note that the control measures articulated in the latter section are not an exclusive list of measures that may be imposed.

Consult with your city, county, or district attorney on the statutory requirements.

Consult with Department of State Health Services personnel to determine communicable disease issues or procedures. Contact the state epidemiologist, Department of State Health Services, at (512) 458-7219 — fax (512) 458-7472.

Using the following sample, draft and deliver the order as directed above.

The sample form is for a communicable disease area quarantine. You may adapt the form as needed for other environmental or toxic agent area quarantines.

ORDER DECLARING AN AREA QUARANTINE

This order is issued under the Texas Health and Safety Code, §81.085, relating to an area quarantine (and under Chapter 508, relating to area quarantine for environmental or toxic agents). I am the local health authority for (*name of county, city, and/or public health district for the city or county*). As the local health authority, I am authorized by law to issue this order.

By this order I am imposing an area quarantine covering:

(description of quarantined area, include one of the following: legal description by the appraisal district for real property; or street address for real property; or specific street boundaries for real property; or other descriptive language for real property).

The imposition of this order is necessary because an outbreak of a communicable disease has occurred and the described area is affected by the outbreak. The communicable disease is: (*scientific and common name of disease and description of disease and/or additional information, if necessary*).

By this order persons in the quarantined area must: (*description of control measures to be followed, including actual measures, time frame for compliance, reporting requirements, and/or any other duties or obligations*).

Persons currently in the quarantined area must continue to follow my instructions during the duration of this area quarantine. Additional control measures may be imposed that are necessary and most appropriate to arrest, control, and eradicate the threat to public health. Any additional control measures will be articulated in further written instructions that I may issue.

(INCLUDE THE FOLLOWING PARAGRAPH IF APPROPRIATE)

All ingress to and egress from the area is forbidden, except for authorized health and law enforcement personnel. Persons in the quarantined area will not be allowed to leave it without proper authorization from health or law enforcement authorities. Individuals outside the quarantine area will not be allowed to enter it without proper authorization from health or law enforcement authorities.

The quarantine will continue for the period of time necessary to arrest, control, and eradicate the threat to public health. Once the area has been determined not to pose a threat to the public health, the area quarantine will be terminated. **(IF YOU ARE ISSUING THIS ORDER UNDER CHAPTER 508, THE ORDER IS VALID FOR NOT MORE THAN 24 HOURS.)**

Notice of this order and any further instructions shall be published at least once each week during the area quarantine period in a newspaper of general circulation in the area and will include a brief explanation of the meaning and effect of this order and instructions. I may use other reasonable means of communication to inform persons in the quarantine area of my orders and instructions.

There are penalties for noncompliance with this order.

IT IS A CRIME TO KNOWINGLY REFUSE TO PERFORM OR ALLOW THE PERFORMANCE OF CONTROL MEASURES ORDERED HERE. REFUSAL COULD RESULT IN UP TO 180 DAYS IN JAIL AND/OR A FINE OF UP TO \$2,000.

(INCLUDE IF ORDER IS ISSUED UNDER CHAPTER 508.)

IT IS A CRIMINAL OFFENSE TO KNOWINGLY FAIL OR REFUSE TO OBEY THIS ORDER. THIS OFFENSE IS A FELONY OF THE THIRD DEGREE AND COULD RESULT IN UP TO 2–10 YEARS IN PRISON AND/OR A FINE OF UP TO \$10,000.

If you have questions, please contact *(name of health authority)* at/by *(means of contact)*.

The outbreak of the communicable disease may affect an area or areas outside of my jurisdiction. In such a case, the local health authority for that area or the Department of State Health Services may issue an order declaring an area quarantine for that area.

This order is issued under my authority as the local health authority for the *(name of county, city, and/or public health district for the city or county)*.

(INCLUDE THE FOLLOWING IF ORDER ISSUED BY DSHS REGIONAL DIRECTOR ONLY)

This order is issued under my authority as the Department of State Health Services regional director for the region that encompasses the described area. I am authorized by law to perform the duties of the local health authority because there is no appointed local health authority for the jurisdiction that includes the area.

Signature: _____

Date (and time of issuance if issued under Chapter 508): _____

Printed name: _____

Physical address: _____

Mailing address: _____

Telephone: _____

E-mail: _____

Fax: _____

Part Six

Control Measures for Common Carriers

General information

Section 81.086 allows a carrier or conveyance to be stopped and control measures to be imposed in three distinct circumstances:

- (1) where there is reasonable cause to believe the carrier or conveyance has “departed from or traveled through an infected or contaminated area” [§81.086(b)–(c)];
- (2) where there is reasonable cause to believe the carrier or conveyance “is transporting cargo or an object that is or may be infected” [§81.086(h)]; or,
- (3) where there is “an individual transported by carrier or conveyance who the department or health authority has reasonable cause to believe has been exposed to or is the carrier of a communicable disease ...” [§81.086(i)].

Instructions that conform to each of these circumstances are provided in this manual.

The first provision allows the department or health authority to order the owner, operator, or agent of the carrier or conveyance to stop the carrier or conveyance “at a port of entry or place of first landing or first arrival in this state” and to provide information on the condition of the passengers or cargo that includes the details of any illness suspected of being communicable that occurred during the journey. *See §81.086(b)*. After inspection, the department or health authority may impose necessary control measures on individuals or property as discussed in Parts Three and Four of this manual.

The second provision allows conditions such as sealed transportation, alternative unloading location, or quarantine or other control measures to be imposed on the object or cargo that is being transported. *See §81.086(h)*.

The third provision allows a person on a carrier or conveyance to be subject to isolation, removal from the carrier or conveyance, or hospitalization under the procedures for imposing control measures on individuals. *See §81.086(i)* and Part Three of this manual.

Section 81.089 covers the actions of a person who “knowingly or intentionally transports or causes to be transported into this state,” a person, animal or object that is a carrier or is suspected of being a carrier of communicable disease. Depending on the circumstances this may be a Class A misdemeanor or a third-degree felony (punishable by imprisonment for up to 10 years and/or a fine of up to \$10,000). If you suspect this may have occurred, you should involve local law enforcement immediately.

Instructions on using the forms for carrier or conveyance control measures (§81.086)

Depending on which provision of §81.086 is applicable, the health authority may need to take a different course of action.

STEPS:

1. Read §81.086 carefully with your attorney. Also review §81.003, which defines “communicable disease” and other terms, and §81.082, relating to the administration of control measures. Note that the control measures articulated in §81.082 are not an exclusive list of measures that may be imposed.
2. Consult with your city, county, or district attorney on the statutory requirements.
3. Consult with Department of State Health Services personnel to determine communicable disease issues or procedures. Contact the state epidemiologist, Department of State Health Services, at (512) 458-7219
— fax (512) 458-7472.
4. If the carrier, cargo, or passenger is journeying into the United States, you may also contact the federal Centers for Disease Control and Prevention (CDC) or the department will contact the CDC. The federal government has authority for controlling disease threats from foreign countries (42 USC §264).
5. Determine which provision of §81.086 is applicable and consult the chart that follows.
6. Using the samples beginning on page 37, draft and deliver the order.

ADDITIONAL STEPS AUTHORIZED BY §81.086

SECTION	STATUTORY LANGUAGE	ADDITIONAL STEPS
81.086(c)	“ ... reasonable cause to believe that a carrier or conveyance that has departed from or traveled through an infected or contaminated area is or may be infected or contaminated with a communicable disease”	Use the first and second forms. You may “impose necessary technically feasible control measures” on the carrier or any item or individual transported by the carrier. <i>See §81.086(c)</i> . These control measures should be imposed under §81.083 (application of control measures to an individual) or §81.084 (application of control measures to property). See Parts Three and Four of this manual for other forms.
81.086(h)	“ ... reasonable cause to believe that a carrier or conveyance is transporting cargo or an object that is or may be infected or contaminated with a communicable disease”	<p>You may order the “owner, operator, or authorized agent in control of the carrier or conveyance” to require the “cargo or object be transported in secure confinement or sealed in a car, trailer, hold, or compartment, as appropriate” [§81.086(h)(1)] or you may “require that the cargo or object be unloaded at an alternate location” [§81.086(h)(2)]. The form subtitled (<i>Cargo Contaminated</i>) has alternate wording depending on which of these alternatives are selected.</p> <p>A third alternative is to “investigate and, if necessary, quarantine the cargo or object and any required control measure as authorized by Section 81.084” [§81.086(h)(3)]. A form subtitled (<i>Cargo Control Measures</i>) is provided for this option. The notice and form for invoking this statute should reference §81.084 for its authority. Section 81.084 has provisions that allow control measures up to and including destruction of the property, but requires that notice be given to the owner. See Part Four of this manual.</p>
81.086(i)	“ ... an individual transported by carrier or conveyance who the ... health authority has reasonable cause to believe has been exposed to or is the carrier of a communicable disease”	Subsection 81.086(i) allows you to require an individual “to be isolated from other travelers and to disembark with the individual’s personal effects and baggage at the first location equipped with adequate investigative and disease control facilities ...” Follow the same steps as you would for any other imposition of control measures on an individual. Section 81.083 authorizes you to take any such steps that are “ ... reasonable and necessary to prevent the introduction, transmission, and spread of disease in this state.” The notice and form for invoking this statute should reference §81.083 for its authority. See Part Three of this manual.

**ORDER FOR COLLECTION OF INFORMATION
ON DETAINED COMMON CARRIER
[Under §81.086(b)]**

TO: (*name of person*)
FROM: (*name of health authority*)
DATE: (*today's date*)

This order is issued under the Texas Health and Safety Code, §81.086, relating to the application of control measures to private and common carriers and private conveyances. I am the local health authority for (*name of county, city, and/or public health district for the city or county*).

You have been identified as the owner, operator, or authorized agent in control of the carrier or conveyance identified below:

(*description of carrier or vehicle — **INCLUDE LICENSE NUMBERS OR OTHER IDENTIFYING NUMBERS OR MARKINGS***)

You are ordered to stop the carrier or conveyance at (*port of entry or place of first landing or first arrival in Texas*).

As required by Texas Health and Safety Code §81.086(b), please provide the following information in writing from your own knowledge, or documents, cargo manifests, etc.:

- (1) List each passenger carried.
- (2) Describe all cargo carried.
- (3) Describe any illness or suspected illness experienced by any operator, crew, or passenger.
- (4) Describe any condition on board the carrier or conveyance during the journey that may lead to the spread of disease.
- (5) Describe any medical or health instructions provided to you or imposed on the carrier or conveyance, its passengers or crew, or its cargo or any other object on board during the journey.

You must provide this information to me by _____ (a.m.) (p.m) on _____, 20____. You may be issued a written order to require you to impose necessary technically feasible control measures to prevent the introduction and spread of communicable disease in this state.

If you have any questions, please contact (*name of health authority*) at/by (*means of contact*).

This order is issued under my authority as the local health authority for (*name of county, city, and/or public health district for the city or county*).

(INCLUDE THE FOLLOWING ONLY IF ORDER IS ISSUED BY DSHS REGIONAL DIRECTOR)

This order is issued under my authority as the Department of State Health Services regional director for the region in which the described carrier is located. I am authorized by law to perform the duties of the local health authority because there is no appointed local health authority for the jurisdiction that includes the property.

Signature: _____

Date: _____

Printed name: _____

Physical address: _____

Mailing address: _____

Telephone: _____

E-mail: _____

Fax: _____

**ORDER OF CONTROL MEASURE APPLIED TO COMMON CARRIER
OR PRIVATE CONVEYANCE
(Infected with Communicable Disease)**

TO: (*name of person*)
FROM: (*name of health authority*)
DATE: (*today's date*)

This order is issued under the Texas Health and Safety Code, §§81.086(c) and 81.084, relating to the application of control measures to private and common carriers and private conveyances. I am the local health authority for (*name of county, city, and/or public health district for the city or county*). As the local health authority, I am authorized by law to issue this order.

Based on information available, you have been identified as the owner, operator, or authorized agent in control of the carrier or conveyance identified below:

(*description of carrier or vehicle — **INCLUDE LICENSE NUMBERS OR OTHER IDENTIFYING NUMBERS OR MARKINGS***)

As the local health authority and after inspection, I have reasonable cause to believe that the carrier or conveyance described above has departed from or traveled through an area that is infected or contaminated with a communicable disease and (1) is or may be infected or contaminated with a communicable disease, (2) has cargo or an object on board that is or may be infected or contaminated with a communicable disease, or (3) has an individual on board who has been exposed to, or is the carrier of, a communicable disease. **(CHOOSE ONE OR MORE OF THE PRECEDING PROVISIONS)**

You are hereby ordered to quarantine or isolate the (*carrier, vehicle, aircraft, or watercraft*). It should be moved or relocated only after receiving a written order from the Department of State Health Services or me. You are hereby ordered to allow further inspection of the carrier, vehicle, aircraft, or watercraft or any cargo or object contained therein by me, the Department of State Health Services, or persons designated by the Department of State Health Services or me.

You are further ordered to impose the following necessary technically feasible control measures: (*description of control measures that the person is required to impose*).

Following inspection, further control measures as necessary to control the spread of communicable disease may be ordered.

The imposition of this order is necessary as a precautionary control measure associated with an outbreak of (*name of disease: include scientific and common name*), a communicable disease.

There are penalties for noncompliance with this notice.

IT IS A CRIME TO KNOWINGLY REFUSE TO PERFORM OR ALLOW THE PERFORMANCE OF CONTROL MEASURES ON PROPERTY AS ORDERED BY A LOCAL HEALTH AUTHORITY OR THE DEPARTMENT OF STATE HEALTH SERVICES OR TO KNOWINGLY CONCEAL AN INFECTED OBJECT THAT IS THE SUBJECT OF AN INVESTIGATION BY EITHER. BOTH CRIMES ARE CLASS B MISDEMEANORS AND COULD RESULT IN UP TO 180 DAYS IN JAIL AND/OR A FINE OF UP TO \$2,000.

If you have any questions, please contact (*name of health authority*) at/by (*means of contact*).

This order is issued under my authority as the local health authority for (*name of county, city, and/or public health district for the city or county*).

(INCLUDE THE FOLLOWING ONLY IF ORDER IS ISSUED BY DSHS REGIONAL DIRECTOR)

Issued under my authority as the Department of State Health Services regional director for the region in which the described carrier is located. I am authorized by law to perform the duties of the local health authority because there is no appointed local health authority for the jurisdiction that includes the property.

Signature: _____

Date: _____

Printed name: _____

Physical address: _____

Mailing address: _____

Telephone: _____

E-mail: _____

Fax: _____

**ORDER OF CONTROL MEASURE APPLIED TO
COMMON CARRIER OR PRIVATE CONVEYANCE
(Cargo Contaminated)**

TO: (name of person)
FROM: (name of health authority)
DATE: (today's date)

This order is issued under the Texas Health and Safety Code, §81.086, relating to the application of control measures to private and common carriers and private conveyances. I am the local health authority for (name of county, city, and/or public health district for the city or county). As the local health authority, I am authorized by law to issue this order.

Based on information available you have been identified as the owner, operator, or authorized agent in control of the carrier or conveyance identified below:

(description of carrier or vehicle — **INCLUDE LICENSE NUMBERS OR OTHER IDENTIFYING NUMBERS OR MARKINGS**)

As the local health authority I have reasonable cause to believe that the carrier or conveyance described above is transporting cargo or an object that is or may be infected or contaminated with a communicable disease. **(INCLUDE DESCRIPTION OF SPECIFIC CARGO OR OBJECT)**

(CHOOSE AND INCLUDE ONE OF THE FOLLOWING)

(A) You are hereby ordered to place the (cargo or object) in secure confinement or seal it in a car, trailer, hold, or compartment as appropriate, and specified below by my orders, while the cargo or object is being transported through the state of Texas. It should not be removed or relocated from such seal or confinement unless you receive a written order from the Department of State Health Services or from me. You are hereby ordered to allow inspection of the vehicle, aircraft or watercraft or any cargo or object contained therein by me, or the Department of State Health Services, or persons designated by the Department of State Health Services or me. **(INCLUDE SPECIFIC ORDERS ON HOW THE CARGO OR OBJECT SHOULD BE SEALED AND/OR INSPECTED)**

(B) You are hereby ordered to unload the cargo or object at an alternate location equipped with adequate investigative and disease control facilities if the cargo or object is being transported to an intermediate or ultimate destination in the state of Texas that cannot provide the necessary facilities. It should not be removed or relocated from this facility unless

you receive a written order from the Department of State Health Services or me. You are hereby ordered to allow inspection of the vehicle, aircraft, or watercraft or any cargo or object contained therein by me, or the Department of State Health Services, or persons designated by the Department of State Health Services or me. **(INCLUDE SPECIFIC ORDERS ON HOW AND WHERE THE CARGO OR OBJECT SHOULD BE DETAINED)**

Following inspection, further quarantine and control measures as necessary to control the spread of communicable disease may be ordered.

There are penalties for noncompliance with this order.

IT IS A CRIME TO KNOWINGLY REFUSE TO PERFORM OR ALLOW THE PERFORMANCE OF CONTROL MEASURES ON PROPERTY AS ORDERED BY A LOCAL HEALTH AUTHORITY OR THE DEPARTMENT OF STATE HEALTH SERVICES OR TO KNOWINGLY CONCEAL AN INFECTED OBJECT THAT IS THE SUBJECT OF AN INVESTIGATION BY EITHER. BOTH CRIMES ARE CLASS B MISDEMEANORS AND COULD RESULT IN UP TO 180 DAYS IN JAIL AND/OR UP A FINE OF UP TO \$2,000.

If you have any questions, please contact (*name of health authority*) at/by (*means of contact*).

This order is issued under my authority as the local health authority for (*name of county, city, and/or public health district for the city or county*).

(INCLUDE THE FOLLOWING ONLY IF ORDER IS ISSUED BY DSHS REGIONAL DIRECTOR)

Issued under my authority as the Department of State Health Services regional director for the region in which the described carrier is located. I am authorized by law to perform the duties of the local health authority because there is no appointed local health authority for the jurisdiction that includes the property.

Signature: _____

Date: _____

Printed name: _____

Physical address: _____

Mailing address: _____

Telephone: _____

E-mail: _____

Fax: _____

**ORDER OF CONTROL MEASURE APPLIED TO
COMMON CARRIER OR PRIVATE CONVEYANCE
(Cargo Control Measures)**

TO: (*name of person*)
FROM: (*name of health authority*)
DATE: (*today's date*)

This order is issued under the Texas Health and Safety Code, §81.086, relating to the application of control measures to private and common carriers and private conveyances, and §81.084, relating to the application of Control Measures to Property. I am the local health authority for (*name of county, city, and/or public health district for the city or county*). As the local health authority, I am authorized by law to issue this order.

Based on information available you have been identified as the owner, operator, or authorized agent in control of the carrier or conveyance identified below:

(*description of carrier or vehicle — **INCLUDE LICENSE NUMBERS OR OTHER IDENTIFYING NUMBERS OR MARKINGS***)

As the local health authority I have reasonable cause to believe that a carrier or conveyance described above is transporting cargo or an object that is or may be infected or contaminated with a communicable disease. (**INCLUDE DESCRIPTION OF SPECIFIC CARGO OR OBJECT**)

You are hereby ordered to isolate and quarantine the cargo and impose upon it the following control measures. (**INCLUDE SPECIFIC ORDERS ON THE CONTROL MEASURES IMPOSED ON THE CARGO OR OBJECT, INCLUDING DISINFECTION, DESTRUCTION, DETENTION FOR A SPECIFIC PERIOD, ETC.**)

Following inspection, further quarantine and control measures may be ordered, as necessary to control the spread of communicable disease.

There are penalties for noncompliance with this order.

IT IS A CRIME TO KNOWINGLY REFUSE TO PERFORM OR ALLOW THE PERFORMANCE OF CONTROL MEASURES ON PROPERTY AS ORDERED BY A LOCAL HEALTH AUTHORITY OR THE DEPARTMENT OF STATE HEALTH SERVICES OR TO KNOWINGLY CONCEAL AN INFECTED OBJECT THAT IS THE SUBJECT OF AN INVESTIGATION BY EITHER. BOTH CRIMES ARE CLASS B MISDEMEANORS AND COULD RESULT IN UP TO 180 DAYS IN JAIL AND/OR A FINE OF UP TO \$2,000.

If you have any questions, please contact (*name of health authority*) at/by (*means of contact*).

This order is issued under my authority as the local health authority for (*name of county, city, and/or public health district for the city or county*).

(INCLUDE THE FOLLOWING ONLY IF ORDER IS ISSUED BY DSHS REGIONAL DIRECTOR)

Issued under my authority as the Department of State Health Services regional director for the region in which the described carrier is located. I am authorized by law to perform the duties of the local health authority because there is no appointed local health authority for the jurisdiction that includes the property.

Signature: _____

Date: _____

Printed name: _____

Physical address: _____

Mailing address: _____

Telephone: _____

E-mail: _____

Fax: _____

Frequently Asked Questions and Their Answers Concerning the Imposition of Control Measures

Does Texas have a “quarantine” law?

The term “quarantine” is used loosely in common speech and law as a synonym for “isolation.” Texas statutes usually use the more inclusive and accurate term “control measure.” The state law on control measures is found in the Communicable Disease Prevention and Control Act, Health and Safety Code, Chapters 81 and 508. All further references in this document are to the Health and Safety Code unless stated otherwise.

How can I find the Health and Safety Code on the Internet?

State laws are located on the Internet at Texas Legislature Online at <http://tlo2.tlc.state.tx.us/statutes/hs.toc.htm>. (*NOTE: Following a legislative session, this site is not updated for several months. Please refer to the instructions at this site for further information on updates to the statutes.*) Scroll down the table of contents to find the applicable Code (for example, Health and Safety Code). Find the desired chapter (for example, Chapter 81). Then choose the relevant Section (§). These directions also apply to locating other codes listed in this manual such as the Government Code and Occupations Code.

What is the definition of a “communicable disease”?

Section 81.003(1) defines “communicable disease” to mean ‘an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.’

Generally what control measures can be imposed?

Control measures are efforts necessary to control and prevent communicable disease. They include, but are not limited to, immunization, detention, restriction, disinfection, decontamination, isolation, quarantine, disinfestation, chemoprophylaxis, preventive therapy, prevention, and education. See §81.082. However, the law does not limit control measures to only these efforts. Texas law allows control measures to be imposed on individuals, property, areas, or common carriers as discussed below.

Who has the authority to enforce public health laws in an emergency?

For most laws the Department of State Health Services (“department”) has authority that is concurrent with the local health authority. However, it is imperative to read each statute carefully because some statutes give the local health authority or local government different authority from that given to the department or require different procedures to impose a control measure.

“[E]stablishing, maintaining, and enforcing quarantine in the health authority’s jurisdiction” is one of the local health authority’s explicit legal duties. *See §121.024(c)(1)*.

What are the requirements in order for the appointment of a health authority to be legal?

A health authority must be a physician licensed by the State of Texas and a resident of the State of Texas. Once appointed, the health authority must take the official Oath of Office. *See Texas Constitution, Article XVI, Section 1*. The Oath and the Statement of Appointed Officer, which is also required by the Texas Constitution, must be filed with the department regional office covering the health authority’s jurisdiction within ten working days of the date of taking the oath. *See §121.022 and department rules at 25 T.A.C. §85.1(h)*. The health authority serves for a term of two years. *See §121.023*. The oath must be taken each time a new health authority is appointed or the same health authority is reappointed.

Further information on the appointment of health authorities may be obtained at the department’s Web site at <<http://www.dshs.state.tx.us/rls/lha>> or by contacting the appropriate regional office or the department’s Regional and Local Services at (512) 458-7770.

Why are the above requirements relating to the appointment of a health authority important?

A health authority acts as an officer of the state when performing duties prescribed by state law. *See §121.024*. If a health authority has not been legally appointed or taken the required oath of office (*see §121.022*), his or her actions as a health authority, including the imposition of control measures in an emergency, may be subject to challenge, and the immunities from lawsuit and liability available to a state officer may not apply.

Does the local health authority have any liability in civil court for losses that persons or businesses suffer because of an order imposing control measures?

Though the state has had little opportunity to use most of these laws, if the health authority follows the procedures required by state law, the authority's liability should be nonexistent or nominal. The principle of official immunity will protect governmental officials from lawsuit and liability in many cases. Protection from liability is one of the important reasons why the local health authority should ensure that he or she is properly appointed as described above.

Two laws passed in 2003 may protect a health authority — a “state officer” — from civil liability arising from the issuance of control measure orders during an emergency or disaster.

Civil Practice and Remedies Code, §79.003, Disaster Assistance, was enacted in Senate Bill 513 (Chapter 58, 78th Leg., 2003). It provides immunity from civil liability for an act or omission when a person is giving care, assistance, or advice with respect to the management of an incident that is a man-made or natural disaster that threatens individuals, property, or the environment and in which the care, assistance, or advice is provided at the request of local, state, or federal agencies. The act does not apply to persons who expect or receive compensation from, or on behalf of, the recipient of the care, assistance, or advice in excess of reimbursement for expenses. It also does not apply to reckless conduct or intentional, willful, or wanton misconduct. A health authority issuing control measure orders may be considered to be involved in “management of an incident” and therefore covered by this provision.

Government Code, §421.061, Civil Liability, was enacted in House Bill 9 concerning homeland security. It pertains to officers or employees of state or local agencies who are performing homeland security activities or volunteers performing homeland security activities at the request or under the direction of officers or employees of state or local agencies. The act authorizes persons in either of those capacities to be considered members of the state military forces and provides immunity from civil liability while they are performing homeland security activities. For the act to apply, the activity must be under the procedures or circumstances described in the governor's homeland security strategy and must be within the course and scope of the person's authority. The act does not apply to willful or wanton negligence, conscious indifference, or reckless disregard for the safety of others. Until the governor's homeland security strategy is issued, it is not yet clear what activities will be covered or whether health authorities would be considered officers of the state under this provision.

Local health authorities should consult with the authority's city or county attorney on the protections within state law, including the Local Government Code, and case law on local government liability and immunity if more specific information is needed.

Are there other officials who have authority to address emergency situations?

The Secretary of the United States Department of Health and Human Services is authorized to assist states and political subdivisions in the prevention and suppression of communicable disease and to cooperate in the enforcement of quarantine and other health regulations. The Secretary is authorized to advise states on matters relating to the preservation of public health. The Secretary may also extend assistance for up to six months to state or localities in meeting health emergencies of such a nature to warrant federal assistance. *See 42 United States Code, §243.*

The Governor of Texas may invoke powers under the Texas Disaster Act, Government Code, Chapter 418, which gives the Governor sweeping powers to deal with an emergency.

How can the Governor declare a disaster?

The Texas Disaster Act defines a "disaster" as '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' [Government Code §418.004(1)]. The "governor by executive order or proclamation may declare a state of disaster if the governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent" [§418.014(a)]. The governor could use his authority under this law if the terroristic weapon is a communicable disease or if it is something other than a communicable disease, since the governor's authority can be used in the case of any natural or man-made disaster. The governor may declare a state of disaster by executive order or proclamation in response to a request by state or local officials.

Some of the effects of a declaration of a state of disaster would be:

- activation of the state emergency management plan;
- authorization of the use of any forces, supplies, equipment, materials, or facilities assembled to be made available under a disaster;
- suspension of regulatory statutes and rules that would hinder action in coping with a disaster;
- use of all available and necessary state government and political subdivision resources;
- use of necessary private property;
- recommendation for evacuation of an area; and
- control of ingress and egress to and from a disaster area.

See Government Code, §§418.015–418.018.

What is a public health disaster?

A “public health disaster” is a declaration by the governor of a state of disaster and a determination by the commissioner that an immediate threat from communicable disease exists that “poses a high risk of death or serious long-term disability to a large number of people” and “creates a substantial risk of public exposure because of the disease’s high level of contagion or the method by which the disease is transmitted.” *See Health and Safety Code §81.003(7)*. This definition was added by the Texas Legislature in House Bill 2292 in 2003. See Part Two of this manual for a discussion of how a public health disaster affects the issuance of control measure orders.

Must a health authority or the department issue an order to perform control measures to address a bioterrorism event involving a communicable disease?

The statutes enacted by House Bill 2292 affects many areas of public health preparedness and communicable disease control and allow control measures to be more expeditiously imposed during a public health disaster. Health and Safety Code section 81.083(e)(2) provides that an individual may be subject to court orders when a public health disaster exists, “regardless of whether the department or health authority has issued a written order and the individual has indicated that the individual will not voluntarily comply with control measures.” Section 81.084(k) allows the department or health authority to impose additional control measures on property (after an initial order) as deemed necessary and appropriate to “arrest, control, and eradicate the threat to the public health.”

In case of a bioterrorism event, does anyone have authority to mandate the allocation or reallocation of medical resources, such as hospital beds, professional staff (doctors, nurses, etc.), medical supplies, and other health resources?

In the case of an area quarantine, §81.085(g) allows a county commissioners court, a city council, or the board of directors of a hospital district to “suspend the admission of patients desiring admission for elective care and treatment,” with certain exceptions. Such an action would make available isolation and quarantine facilities during an area quarantine.

When the governor declares a state of disaster, he has the authority to use all available state and local governmental resources; reassign state governmental resources and personnel; and “commandeer or use any private property if the Governor finds it necessary to cope with a disaster, subject to the compensation requirements of this chapter.” *See Government Code, §418.017(c)*.

Government Code, §418.016, gives the governor authority to suspend any regulatory statute prescribing procedures for the conduct of state business or the orders or rules of a state agency if strict compliance would in any way prevent, hinder, or delay necessary action in coping with a disaster. This authority could be applied to regulatory requirements relating to the licensing of health-care professionals.

Government Code, §418.171, allows a professional person licensed by another state to render aid in Texas to meet an emergency or disaster.

In the event of an emergency, can hospital licensing laws and rules be waived or modified?

If the governor declares a state of disaster, he has the authority to waive regulatory requirements, including licensing laws and rules.

Section 241.026(c) provides a process by which the Board of Health may waive or modify hospital licensing laws or rules if it is determined that the waiver or modification will facilitate the operation of the hospital and the action is in the best interest of the individuals served or to be served by the hospital. The board has delegated to the commissioner of health the authority to exercise this power. The procedures for obtaining a waiver are found at 25 T.A.C. §133.81. This rule is written for consideration of requests from individual hospitals but is broad enough to allow the commissioner to apply a particular waiver to all hospitals in an area that is affected.

What authority do public health authorities have in the case of individuals who have been or may have been subject to a chemical attack?

The department has many of the same powers to conduct epidemiological and toxicological investigations as it does to conduct communicable disease investigations. *See §§161.0211–161.0212.* The requirements relating to the provision of records and other information upon the department's request are the same.

In 2003 the 78th Legislature added Health and Safety Code, Chapter 508, Area Quarantine for Environmental or Toxic Agent. This chapter allows a health authority or the commissioner to impose an area quarantine when the introduction of an environmental or toxic agent into the environment has occurred. See Part Two of the manual for further discussion of Chapter 508.

In the event of a large-scale disease outbreak, who has the ability to control or ration the use of antibiotics or vaccines when there is a mass demand for them?

If the governor declares a state of disaster, he has authority to use all available state and local government resources and to commandeer or use private property subject to certain compensation requirements. See *Government Code §418.017*.

Can state or local public health officials procure or to confiscate medications or vaccines?

There are no laws that allow the department to take control of, or confiscate, medications or vaccines.

If the department originally distributed the medicines or vaccines by contracts with local public health departments, the contracts may provide for department control or confiscation in the event of an emergency.

If mass treatment or prophylaxis is to be mandatory instead of voluntary, the department or health authority would have to issue an order mandating such a control measure under §81.085(c) relating to area quarantine or under §81.083 relating to each individual. See also §81.009(b), which suspends the normal right to claim exemption from treatment on religious grounds in the event of an emergency, an area quarantine, or a declaration of a state of disaster.

Are there any applicable federal regulations?

The United States federal government has analogous powers to the governor, commissioner, and state health authorities. See *42 U.S.C. §243, General Powers and Duties, Federal-State Cooperation and 42 U.S.C. §264, General Powers and Duties, Quarantine and Inspection. See also 42 C.F.R. Subchapter F, Part 70, Interstate Quarantine.*

Is there a list of control measures that can be imposed?

Section 81.082(f) provides a list of 12 suggested control measures: immunization, detention, restriction, disinfection, decontamination, isolation, quarantine, disinfestations, chemoprophylaxis, preventive therapy, prevention, and education. The list is not comprehensive; a health authority may impose any control measures “that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.” See §§81.083(b), 81.084(k), and 81.085(c).

Must a health authority or the department issue an order to perform control measures to address a communicable disease?

If the local health authority or department receives full cooperation on all activities required to address the suspected or actual communicable disease from all necessary parties — such as the individual exposed, the owner of infected property, or the operator of a common carrier — orders may not be necessary. In weighing whether appropriate orders should be issued, rather than relying on future voluntary cooperation on all matters, one should consider such issues as:

- whether all necessary parties will continue to cooperate over time,
- whether orders are necessary to ensure any possible later court action, and
- whether orders are necessary for law enforcement to provide adequate assistance.

Do public health authorities have access to medical and health records involving communicable disease or suspected communicable disease in individuals?

In an instance of control measures imposed by a health authority, the health authority would be authorized by law to receive records because a health authority must perform each duty that is necessary to implement and enforce a law to protect the public health. *See §121.024(b)(1).*

Most health-care professionals that would have information on patients with certain suspected or diagnosed diseases, such as anthrax and smallpox, are required to report to the local health authority, who then reports to the department. *See §§81.042, 81.043 and 25 T.A.C. §§97.2, 97.3.*

Section 81.046 addresses the confidentiality requirements of reports, records, and other information furnished to a health authority or the department. In addition, and without regard as to whether information was received through such a report, the department may investigate the existence of communicable disease in the state in order to formulate control measures. The law requires a person to provide records and other information to the department on request according to the department's written instructions. *See §81.061.* Patient consent is not required.

Licensing laws generally also provide for a specific exception from confidentiality restrictions for information being provided to a governmental agency if required or authorized by law. For example, *see §241.153*, concerning hospital records, *and Occupations Code, §159.004*, concerning physician records. In such cases patient consent is not required.

The federal Health Insurance Portability and Accountability Act (HIPAA) privacy regulations allow a health-care provider to continue to provide protected health information to a health authority or the department:

- as required by law, e.g., laws requiring the reporting of communicable disease [45 Code of Federal Regulations §164.512(a)];
- as authorized by law for public health activities such as controlling disease, e.g., laws on reporting disease or authorizing inspections [45 Code of Federal Regulations §164.512(b)]; or
- to prevent or lessen a serious and imminent threat to the health or safety of a person or the public [45 Code of Federal Regulations §164.512(j)].

The DSHS Web site at <<http://www.dshs.state.tx.us/hipaa>> contains further information on HIPAA.

Can an individual refuse medical treatment?

Yes, under certain circumstances. Section 81.009 addresses exemption from medical treatment for religious reasons. Chapter 81 “does not authorize or require the medical treatment of an individual who chooses treatment by prayer or spiritual means as part of the tenets and practices of a recognized church of which the individual is an adherent or member. However, the individual may be isolated or quarantined in an appropriate facility and shall obey the rules, orders, and instructions of the department or health authority while in isolation or quarantine.” Therefore, a person who requests religious exemption from medical treatment may be so exempted, but must still comply with an order for isolation or quarantine. Further, Section 81.009(b) revokes the exemption from medical treatment “during an emergency or an area quarantine or after the issuance by the Governor of an executive order or a proclamation under Chapter 418, Government Code (Texas Disaster Act of 1975).”

Who has the authority to impose control measures on an individual?

Imposing control measures on individuals is a process that, though not common, has been used in this state, mainly in cases of tuberculosis. Usually the first step in the process is for the health authority or department to execute and deliver an order to the individual.

To impose control measures on an individual, does the health authority's order have to be approved by a city, county, or district judge?

Many health authorities are familiar with applying control measures to an individual (§81.083). This process begins with an order directed to the individual (sometimes called a “warning letter” or “control measure letter”) from the health authority or department, which does not have to be approved by a judge or court.

Any further coercive measures used to obtain compliance with the health authority's order will require an order from a state district court. If a public health disaster exists as defined in §81.003(7), the initial order is not required. *See §81.083(c)*. The health authority may go directly to a state district court.

What are the requirements for obtaining a court order if the individual does not comply with the health authority's or department's order?

A person may be subject to court order if he or she does not comply with the department's or health authority's order and “the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health.” *See §81.083(e)*. If a public health disaster has been declared, a department or health authority order does not have to be issued; the department or health authority can go to a district court as described below.

Chapter 81, Subchapter G addresses “Court Orders for Management of Persons with Communicable Diseases.” The health authority must request the city, county, or district attorney to file an application for a court order. The attorney general will file an application if requested by the department. The application includes the order issued under §81.083, if inpatient treatment is being requested, and a medical evaluation. The medical evaluation must be signed by the commissioner of health or his designee or by a health authority with the concurrence of the commissioner or his designee. The designation of a health-care facility is also required. A health authority's medical evaluation form meeting the requirements of the law is included in this manual. The commissioner's or a designee's concurrence may be obtained by contacting the department's Office of General Counsel at (512) 458-7236 or by fax at (512) 458-7751. The facility designation and the commissioner's concurrence will be prepared by the department.

A protective order may be obtained quickly from the court ordering the person's immediate detention. Otherwise, a judge, or a jury if requested, will decide if mandatory inpatient treatment or some other treatment option is most appropriate. The district court will issue its order to the person and anyone necessary to carry out the order (e.g., law enforcement officers).

Obtaining a court order may not be a practical process in an emergency. A declaration of a state of emergency by the governor or the imposition of control measures on property or an area as described below may be a more expeditious way to address control measures needed in an emergency.

Who has the authority to impose quarantine or control measures on property?

The department or a local health authority may place property in quarantine. Section 81.084, subsection (a) provides:

If the department or a health authority has reasonable cause to believe that property in its jurisdiction is or may be infected or contaminated with a communicable disease, the department or health authority may place the property in quarantine for a period necessary for a medical examination or technical analysis of samples taken from the property to determine if the property is infected or contaminated. The department or health authority may tag an object for identification with a notice of possible infection or contamination.

Property may be an object, a parcel of land, or a structure, an animal, or other property on a parcel of land. *See §81.084(j)*. Notice of the action to the person who owns or controls the property is required, unless a public health disaster has been declared. A sample notice form is included in this manual. Notice must be sent by registered or certified mail or personal delivery to the person who owns or controls the property and, in some circumstances, be posted “on the land and at a place convenient to the public in the county courthouse.” *See §81.084(b)*. Note that the posting requirement has changed and notice need not be posted directly on the courthouse door. A health authority needs to work closely with his or her city, county, or district attorney to comply with these requirements, especially if the property is privately owned.

To impose control measures on property, does the health authority issue an order?

Once the determination is made that the property is infected or contaminated, the department or health authority may issue a written order requiring the person who owns or controls the property to impose control measures to disinfect or decontaminate the property or to secure or destroy the property. *See §81.084(c)–(d)*. A sample order is included in this manual. The department or health authority may issue further orders if necessary. *See §81.084(d)–(d-1), (k)*. There is no requirement that a judge or court approve these orders.

Does an order for control measures on property have to be approved by a city, county, or district judge?

County or district court involvement may be necessary where “a person fails or refuses to comply with the orders of the department or health authority ...” and there is “reason to believe that the property is or may be infected or contaminated with a communicable disease that presents an immediate threat to the public health.” See §81.084(e). If initiated by the department, the attorney general would petition the court. If initiated by a health authority, the appropriate city, county, or district attorney would petition the court.

Who has the authority to quarantine or impose control measures on an area?

The isolation of a city, county, or portion of such a political subdivision may be necessary where there is an outbreak of communicable disease in a finite geographic area. There is overlapping authority between the local health authority and the department. There are some actions that either the commissioner of health or a local health authority might take.

Similarly, the governor has broad authority under the Texas Disaster Act, as discussed above, to take steps that will address a public health emergency. The governor has some authority to do things the public health sector lacks. This is a reason for careful coordination between all persons and entities involved in addressing a communicable disease emergency.

What is the specific law on area quarantine?

The most relevant provisions specific to area quarantine are §81.085(a)–(c):

- (a) If an outbreak of communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine coextensive with the area affected. The commissioner may impose an area quarantine, if the commissioner has reasonable cause to believe that individuals or property in the area may be infected or contaminated with a communicable disease, for the period necessary to determine whether an outbreak of communicable disease has occurred. A health authority may impose the quarantine only within the boundaries of the health authority’s jurisdiction.

(b) A health authority may not impose an area quarantine until the authority consults with the department. A health authority that imposes an area quarantine shall give written notice to and shall consult with the governing body of each county and municipality in the health authority's jurisdiction that has territory in the affected area as soon as practicable.

(c) The department may impose additional disease control measures in a quarantine area that the department considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

Absent preemptive action by the department under this chapter or by the governor under Chapter 418, Government Code (Texas Disaster Act of 1975), a health authority may impose in a quarantine area under the authority's jurisdiction additional disease control measures that the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

Note that a health authority cannot impose an area quarantine prior to consulting with the department. See §81.085(b).

Have there been any legislative changes to the law on area quarantine?

House Bill 627 in 2003 added Chapter 508 to the Health and Safety Code relating to area quarantine. See Chapter 508. The legislative updates are reflected in the Statutory Appendix in this manual. The most important changes to the law on area quarantine include:

- An area quarantine may be imposed by the commissioner or a local health authority (in addition to communicable disease outbreaks) if it is determined that the introduction of an environmental or toxic agent into the environment has occurred. These agents include radioactive, hazardous, or other toxic substances.
- The area quarantine must be accomplished by the least restrictive means necessary to protect the public health.
- The area quarantine will expire by the earlier of: 24 hours having passed, termination or superseding action by the governor by declaration of a state of disaster, or superseding action by the commissioner.
- There is a criminal penalty (third-degree felony) created for violation of an area quarantine.

Are there difficulties with imposing an area quarantine?

One problem that the local health authority or the commissioner of state health services would face is the determination of when an “outbreak of communicable disease occurs.” For example, does an outbreak occur when a crop duster is seen over a city spraying an unknown substance? Little guidance is provided in the law as to what would constitute an outbreak. Again, a health authority must consult with the department before imposing an area quarantine. *See §81.085(b).*

In an instance where an outbreak has not occurred, it may be more expeditious to ask the commissioner to impose an area quarantine for the period necessary to determine whether an outbreak has occurred. This would accomplish the goal of isolating the geographic area if that is needed.

How does the commissioner or health authority impose an area quarantine?

The commissioner of state health services or the health authority “may use all reasonable means of communication to inform persons in the quarantine area of the ... orders and instructions ...” The department or health authority must also publish a notice of the orders and instructions at least once a week in an area newspaper. *See §81.085(e).* The law does not specify a specific format or content of an order, instruction, or notice.

The department has developed a sample format for an order, which is included in Part Five of this manual.

Does an order for area quarantine have to be approved by a city, county, or district judge?

Court approval is not required for a health authority or commissioner’s order imposing an area quarantine. However, after a health authority has imposed an area quarantine (after consultation with the department), the authority must give “written notice to and shall consult with the governing body of each county and municipality in the health authority’s jurisdiction that has territory in the affected area as soon as practicable.” *See §81.085(b).*

May an area quarantine include other control measures?

A health authority may impose in an area quarantine “additional disease control measures that the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.” *See §81.085(c).* The department has similar authority. Those additional measures should be articulated in the orders, instructions, and notices referenced in this manual.

To impose control measures on a common carrier, does the health authority issue an order?

Section 81.086 provides instructions for the department or health authority to issue an order to comply with control measures to “prevent the introduction and spread of communicable disease in this state.”

Does an order for control measures on a common carrier have to be approved by a city, county, or district judge?

The statute does not explicitly require the involvement of a court or prior consultation with any governmental entity before the department or local health authority initially acts. However, if control measures on individuals or property are imposed after inspection, the approval and order requirements for imposing such control measures will apply.

The law does not specify any format for an order or other documentation. The department has developed order forms which are included in Part Six of this manual.

Is there a criminal penalty for violating the Communicable Disease Prevention and Control Act?

The Communicable Disease Prevention and Control Act has several criminal provisions. Unless otherwise noted, the provisions listed below are Class B misdemeanors (punishable by up to 180 days in jail and/or a fine of up to \$2000). It is a criminal offense to:

- (1) knowingly conceal or attempt to conceal the fact that a person has, has been exposed to, or is the carrier of a communicable disease or that the person’s minor child has a disease (§81.066);
- (2) knowingly conceal, remove, or dispose of an infected or contaminated animal, object, vehicle, watercraft, or aircraft that is the subject of an investigation by the department, a health authority, or a peace officer (§81.067);
- (3) knowingly refuse entry to the department, a health authority or a peace officer on presentation of a valid search warrant to conduct a disease investigation (Class A misdemeanor punishable by up to one year in jail and/or a fine of up to \$4000) (§81.068);

- (4) knowingly refuse to perform or allow the performance of control measures on individuals, property, areas, or carriers as ordered by a health authority or the department (§81.087);
- (5) knowingly remove, alter or destroy a quarantine device (§81.088);
- (6) knowingly transport into this state an object, individual or animal that is known to be infected or contaminated with a communicable disease (Class A misdemeanor unless done with intent to harm, and then it may be a third-degree felony punishable by 2–10 years in prison and/or a fine of up to \$10,000) (§81.089); and
- (7) knowingly fail or refuse to obey a rule, order or instruction of the department or health authority during an area quarantine (punishable as a third-degree felony by 2–10 years in prison and/or a fine of up to \$10,000) [§81.085(h)].

Is anyone authorized to use force to enforce the Communicable Disease Prevention and Control Act?

The decision to use force would not belong to the department or local health authority. Law enforcement authorities have or would establish procedures for enforcing these laws.

Should specimens or other physical material be treated as evidence and, if so, how?

You should consult with law enforcement and use your medical expertise to determine whether any material or specimen would be useful to law enforcement authorities. If you determine that it is, you should document carefully the names, times, and dates of those who have access to the material. Law enforcement officials can advise you more specifically on how to document this “chain of custody.”

Statutory Appendix

These statutes are provided for your convenience and are believed to be accurate. However, statutes and rules may have changed or their provisions may have been construed differently by the courts. Please consult your attorney to make sure the law has not changed.

SECTIONS AFFECTED BY THE 78TH LEGISLATIVE SESSION

BILL	CODE	SECTION(S)	EFFECT
House Bill 9	Health and Safety Code	81.042(e)	Amends
House Bill 2292	Health and Safety Code	81.011	Adds
House Bill 2292	Health and Safety Code	81.003, 81.004, 81.023, 81.041, 81.042, 81.043, 81.046, 81.064, 81.065, 81.066, 81.067, 81.068, 81.082, 81.083, 81.084, 81.085, 81.086, 81.088, 81.089, 81.151, 81.152, 81.162	Amends
Senate Bill 401	Health and Safety Code	81.095(b)	Amends
Senate Bill 1024	Health and Safety Code	81.211	Adds
House Bill 2292	Health and Safety Code	161.011	Amends
Senate Bill 756	Government Code	418.004(8)	Amends
Senate Bill 985	Government Code	418.004(3)	Amends
House Bill 9	Government Code	418.176–418.183	Adds
House Bill 627	Health and Safety Code	508.001–508.004	Adds
House Bill 9	Government Code	421.001–421.082	Adds
Senate Bill 513	Civil Practice and Remedies Code	79.003	Adds

HEALTH AND SAFETY CODE

CHAPTER 81. COMMUNICABLE DISEASES

SUBCHAPTER A.

GENERAL PROVISIONS

§81.001. Short Title

This chapter may be cited as the Communicable Disease Prevention and Control Act.

§81.002. Responsibility of State and Public

The state has a duty to protect the public health. Each person shall act responsibly to prevent and control communicable disease.

§81.003. Definitions

In this chapter:

(1) “Communicable disease” means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

(2) “Health authority” means:

(A) a physician appointed as a health authority under Chapter 121 (Local Public Health Reorganization Act) or the health authority’s designee; or

(B) a physician appointed as a regional director under Chapter 121 (Local Public Health Reorganization Act) who performs the duties of a health authority or the regional director’s designee.

(3) “Health professional” means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of the health of another individual or of an animal; and

(B) duties require a specified amount of formal education and may require a special examination, certificate or license, or membership in a regional or national association.

(4) “Local health department” means a department created under Chapter 121 (Local Public Health Reorganization Act).

- (5) “Physician” means a person licensed to practice medicine by the Texas State Board of Medical Examiners.
- (6) “Public health district” means a district created under Chapter 121 (Local Public Health Reorganization Act).
- (7) “Public health disaster” means:
- (A) a declaration by the governor of a state of disaster; and
 - (B) a determination by the commissioner that there exists an immediate threat from a communicable disease that:
 - (i) poses a high risk of death or serious long-term disability to a large number of people; and
 - (ii) creates a substantial risk of public exposure because of the disease’s high level of contagion or the method by which the disease is transmitted.
- (8) “Reportable disease” includes only a disease or condition included in the list of reportable diseases.
- (9) “Resident of this state” means a person who:
- (A) is physically present and living voluntarily in this state;
 - (B) is not in the state for temporary purposes; and
 - (C) intends to make a home in this state, which may be demonstrated by the presence of personal effects at a specific abode in the state; employment in the state; possession of a Texas driver’s license, motor vehicle registration, voter registration, or other similar documentation; or other pertinent evidence.
- (10) “School authority” means:
- (A) the superintendent of a public school system or the superintendent’s designee; or
 - (B) the principal or other chief administrative officer of a private school.
- (11) “Sexually transmitted disease” means an infection, with or without symptoms or clinical manifestations, that may be transmitted from one person to another during, or as a result of, sexual relations between two persons and that may:
- (A) produce a disease in, or otherwise impair the health of, either person; or
 - (B) cause an infection or disease in a fetus in utero or a newborn.

§81.004. Administration of Chapter

- (a) The commissioner is responsible for the general statewide administration of this chapter.
- (b) The board may adopt rules necessary for the effective administration and implementation of this chapter.
- (c) A designee of the board may exercise a power granted to or perform a duty imposed on the board under this chapter except as otherwise required by law.
- (d) A designee of the commissioner may exercise a power granted to or perform a duty imposed on the commissioner under this chapter except as otherwise required by law.

§81.005. Contracts

The department may enter into contracts or agreements with persons as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

§81.006. Funds

The department may seek, receive, and spend appropriations, grants, fees, or donations for the purpose of identifying, reporting, preventing, or controlling communicable diseases or conditions determined to be injurious or to be a threat to the public health subject to any limitations or conditions prescribed by the legislature.

§81.007. Limitation on Liability

A private individual performing duties in compliance with orders or instructions of the department or a health authority issued under this chapter is not liable for the death of or injury to a person or for damage to property, except in a case of willful misconduct or gross negligence.

§81.008. Communicable Disease in Animals; Exchange of Information

The Texas Animal Health Commission and the Texas A&M University Veterinary Diagnostic Laboratory shall each adopt by rule a memorandum of understanding with the department to exchange information on communicable diseases in animals.

§81.009. Exemption From Medical Treatment

- (a) This chapter does not authorize or require the medical treatment of an individual who chooses treatment by prayer or spiritual means as part of the tenets and practices of a recognized church of which the individual is an adherent or member. However, the individual may be isolated or

quarantined in an appropriate facility and shall obey the rules, orders, and instructions of the department or health authority while in isolation or quarantine.

(b) An exemption from medical treatment under this section does not apply during an emergency or an area quarantine or after the issuance by the Governor of an executive order or a proclamation under Chapter 418, Government Code (Texas Disaster Act of 1975).

§81.010. Interagency Coordinating Council for HIV and Hepatitis

(a) In this section, “AIDS” and “HIV” have the meanings assigned by Section 85.002.

(b) The Interagency Coordinating Council for HIV and Hepatitis facilitates communication between state agencies concerning policies relating to AIDS, HIV, and hepatitis.

(c) The council consists of one representative from each of the following agencies appointed by the executive director or commissioner of each agency:

- (1) the department;
- (2) the Texas Department of Mental Health and Mental Retardation;
- (3) the Texas Department of Human Services;
- (4) the Texas Commission on Alcohol and Drug Abuse;
- (5) the Texas Rehabilitation Commission;
- (6) the Texas Youth Commission;
- (7) the Texas Department of Criminal Justice;
- (8) the Texas Juvenile Probation Commission;
- (9) the Texas Commission for the Blind;
- (10) the Texas Commission for the Deaf and Hard of Hearing;
- (11) the Department of Protective and Regulatory Services;
- (12) the Texas Education Agency;
- (13) the Texas State Board of Medical Examiners;
- (14) the Board of Nurse Examiners;
- (15) the Board of Vocational Nurse Examiners;
- (16) the State Board of Dental Examiners;
- (17) the Health and Human Services Commission;
- (18) the Texas Department on Aging; and
- (19) the Texas Workforce Commission.

(d) All representatives appointed to the council must be directly involved in policy or program activities related to services for AIDS, HIV, or hepatitis for their respective agencies.

(e) The representative from the department serves as chairperson of the council.

(f) The council shall meet at least once each quarter on meeting dates set by the council. Each agency that has a representative appointed to the council shall ensure that a representative of the agency attends at least three quarterly meetings of the council each year.

(g) The council shall provide an opportunity for interested members of the public, including consumers and providers of health services, to provide recommendations and information to the council during:

(1) any meeting at which the council intends to vote or votes on any matter; and

(2) at least one of any two consecutive quarterly meetings of the council.

(h) The council shall:

(1) coordinate communication among the member agencies listed in Subsection (c) concerning each agency's programs in providing services related to AIDS, HIV, and hepatitis; and

(2) develop a plan that facilitates coordination of agency programs for:

(A) prevention of AIDS, HIV infection, and hepatitis; and

(B) provision of services to individuals who have hepatitis or are infected with HIV.

(i) Not later than September 1 of each even-numbered year, the council shall file a report with the legislature and the governor containing policy recommendations relating to:

(1) prevention of AIDS, HIV infection, and hepatitis; and

(2) delivery of health services to individuals who have AIDS or hepatitis or are infected with HIV.

(j) The council shall establish advisory committees composed of representatives from associations, consumer advocates, and regulatory agencies, boards, or commissions as needed to assist in carrying out its duties under this section.

(k) The department shall provide administrative support to the council.

§81.011 Request for Information

In times of emergency or epidemic declared by the commissioner, the department is authorized to request information pertaining to names, dates of birth, and most recent addresses of individuals from the driver's license records of the Department of Public Safety for the purpose of notification to individuals of the need to receive certain immunizations or diagnostic, evaluation, or treatment services for suspected communicable diseases.

SUBCHAPTER B.

PREVENTION

§81.021. Board's Duty

The board shall exercise its power in matters relating to protecting the public health to prevent the introduction of disease into the state.

§81.022. Health Education

- (a) The department may conduct a program of health education for the prevention and control of communicable disease.
- (b) The department may contract for presentations to increase the public awareness of individual actions needed to prevent and control communicable disease. The types of presentations include mass media productions, outdoor display advertising, newspaper advertising, literature, bulletins, pamphlets, posters, and audiovisual displays.
- (c) The department shall recommend a public school health curriculum to the State Board of Education.

§81.023. Immunization

- (a) The board shall develop immunization requirements for children.
- (b) The board shall cooperate with the Department of Protective and Regulatory Services in formulating and implementing the immunization requirements for children admitted to child-care facilities.
- (c) The board shall cooperate with the State Board of Education in formulating and implementing immunization requirements for students admitted to public or private primary or secondary schools.

§81.024. Reports by Board

The board shall provide regular reports of the incidence, prevalence, and medical and economic effects of each disease that the board determines is a threatening risk to the public health. A disease may be a risk because of its indirect complications.

SUBCHAPTER C.

REPORTS AND REPORTABLE DISEASES

§81.041. Reportable Diseases

- (a) The board shall identify each communicable disease or health condition that shall be reported under this chapter.
- (b) The board shall classify each reportable disease according to its nature and the severity of its effect on the public health.
- (c) The board shall maintain and revise as necessary the list of reportable diseases.
- (d) The board may establish registries for reportable diseases and other communicable diseases and health conditions. The provision to the department of information relating to a communicable disease or health condition that is not classified as reportable is voluntary only.
- (e) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases under this chapter for which the board shall require reports.
- (f) In a public health disaster, the commissioner may require reports of communicable diseases or other health conditions from providers without board rule or action. The commissioner shall issue appropriate instructions relating to complying with the reporting requirements of this section.

§81.042. Persons Required to Report

- (a) A report under Subsection (b), (c), or (d) shall be made to the local health authority.
- (b) A dentist or veterinarian licensed to practice in this state or a physician shall report, after the first professional encounter, a patient or animal examined that has or is suspected of having a reportable disease.
- (c) A local school authority shall report a child attending school who is suspected of having a reportable disease. The board by rule shall establish procedures to determine if a child should be suspected and reported and to exclude the child from school pending appropriate medical diagnosis or recovery.
- (d) A person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a specimen derived from a human body yields microscopic, cultural, serological, or other evidence of a reportable disease shall report the findings, in accordance with this section and procedures adopted by the board, in the jurisdiction in which:

- (1) the physician's office is located, if the laboratory examination was requested by a physician; or
 - (2) the laboratory is located, if the laboratory examination was not requested by a physician.
- (e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)–(d):
- (1) a professional registered nurse;
 - (2) an administrator or director of a public or private temporary or permanent child-care facility;
 - (3) an administrator or director of a nursing home, personal care home, maternity home, adult respite care center, or adult day-care center;
 - (4) an administrator of a home health agency;
 - (5) an administrator or health official of a public or private institution of higher education;
 - (6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;
 - (7) a superintendent, manager, or health official of a public or private camp, home, or institution;
 - (8) a parent, guardian, or householder;
 - (9) a health professional;
 - (10) an administrator or health official of a penal or correctional institution; or
 - (11) emergency medical service personnel, a peace officer, or a firefighter.

§81.043. Records and Reports of Health Authority

- (a) Each health authority shall keep a record of each case of a reportable disease that is reported to the authority.
- (b) A health authority shall report reportable diseases to the department's central office at least as frequently as the interval set by board rule.

§81.044. Reporting Procedures

- (a) The board shall prescribe the form and method of reporting under this chapter, which may be in writing, by telephone, by electronic data transmission, or by other means.

(b) The board may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:

- (1) the patient's name, address, age, sex, race, and occupation;
- (2) the date of onset of the disease or condition;
- (3) the probable source of infection; and
- (4) the name of the attending physician or dentist.

(c) The commissioner may authorize an alternate routing of information in particular cases if the commissioner determines that the reporting procedure would cause the information to be unduly delayed.

§81.045. Reports of Death

(a) A physician who attends a person during the person's last illness shall immediately notify the health authority of the jurisdiction in which the person's death is pronounced or the department if the physician knows or suspects that the person died of a reportable disease or other communicable disease that the physician believes may be a threat to the public health.

(b) An attending physician or health authority, with consent of the survivors, may request an autopsy if the physician or health authority needs further information concerning the cause of death in order to protect the public health. The health authority shall order the autopsy to determine the cause of death if there are no survivors or the survivors withhold consent to the autopsy. The autopsy results shall be reported to the department.

(c) A justice of the peace acting as coroner or a county medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, who finds that a person's cause of death was a reportable disease or other communicable disease that the coroner or medical examiner believes may be a threat to the public health shall immediately notify the health authority of the jurisdiction in which the finding is made or the department.

§81.046. Confidentiality

(a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under

Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

(c) Medical or epidemiological information may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information;

(3) to medical personnel, appropriate state agencies, or county and district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions;

(4) to appropriate federal agencies, such as the Centers for Disease Control of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information.

(d) In a case of sexually transmitted disease involving a minor under 13 years of age, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

(e) A state or public health district officer or employee, local health department officer or employee, or health authority may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of, or reports or information about, a person examined or treated for a reportable disease by the public health district, local health department, or health authority without that person's consent.

(f) Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary during a public health disaster to law enforcement personnel solely for the purpose of protecting the health or life of the person identified in the report, record, or information. Only the minimum necessary information may be released under this subsection, as determined by the health authority or department.

§81.047. Epidemiological Reports

Subject to the confidentiality requirements of this chapter, the department shall require epidemiological reports of disease outbreaks and of individual cases of disease suspected or known to be of importance to the public health. The department shall evaluate the reports to determine the trends involved and the nature and magnitude of the hazards.

§81.048. Notification of Emergency Personnel, Peace Officers, and Fire Fighters

(a) The board shall:

(1) designate certain reportable diseases for notification under this section; and

(2) define the conditions that constitute possible exposure to those diseases.

(b) Notice of a positive test result for a reportable disease designated under Subsection (a) shall be given to an emergency medical service personnel, peace officer, or fire fighter as provided by this section if:

(1) the emergency medical service personnel, peace officer, or fire fighter delivered a person to a hospital as defined by Section 1.03, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes);

(2) the hospital has knowledge that the person has a reportable disease and has medical reason to believe that the person had the disease when the person was admitted to the hospital; and

(3) the emergency medical service personnel, peace officer, or fire fighter was exposed to the reportable disease during the course of duty.

(c) Notice of the possible exposure shall be given:

(1) by the hospital to the local health authority;

(2) by the local health authority to the director of the appropriate department of the entity that employs the emergency medical service personnel, peace officer, or fire fighter; and

(3) by the director to the employee affected.

(d) A person notified of a possible exposure under this section shall maintain the confidentiality of the information as provided by this chapter.

- (e) A person is not liable for good faith compliance with this section.
- (f) This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital.

§81.049. Failure to Report; Criminal Penalty

- (a) A person commits an offense if the person knowingly fails to report a reportable disease or health condition under this subchapter.
- (b) An offense under this section is a Class B misdemeanor.

§81.050. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection

(a) The board by rule shall prescribe the criteria that constitute exposure to reportable diseases, including HIV infection. The criteria must be based on activities that the United States Public Health Service determines pose a risk of infection.

(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease, including HIV infection:

- (1) a law enforcement officer;
- (2) a fire fighter;
- (3) an emergency medical service employee or paramedic; or
- (4) a correctional officer.

(c) A request under this section may be made only if the person:

- (1) has experienced the exposure in the course of the person's employment or volunteer service;
- (2) believes that the exposure places the person at risk of a reportable disease, including HIV infection; and
- (3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request.

(d) The department or the department's designee who meets the minimum training requirements prescribed by board rule shall review the person's request and inform the person whether the request meets the criteria establishing risk of infection with a reportable disease, including HIV infection.

(e) The department or the department's designee shall give the person who is subject to the order prompt and confidential written notice of the order. The order must:

- (1) state the grounds and provisions of the order, including the factual basis for its issuance;
- (2) refer the person to appropriate health care facilities where the person can be tested for reportable diseases, including HIV infection; and
- (3) inform the person who is subject to the order of that person's right to refuse to be tested and the authority of the department or health authority to ask for a court order requiring the test.

(f) If the person who is subject to the order refuses to comply, the prosecuting attorney who represents the state in district court, on request of the department or the department's designee, shall petition the district court for a hearing on the order. The person who is subject to the order has the right to an attorney at the hearing, and the court shall appoint an attorney for a person who cannot afford legal representation. The person may not waive the right to an attorney unless the person has consulted with an attorney.

(g) In reviewing the order, the court shall determine whether exposure occurred and whether that exposure presents a possible risk of infection as defined by board rule. The attorney for the state and the attorney for the person subject to the order may introduce evidence at the hearing in support of or opposition to the testing of the person. On conclusion of the hearing, the court shall either issue an appropriate order requiring counseling and testing of the person for reportable diseases, including HIV infection, or refuse to issue the order if the court has determined that the counseling and testing of the person is unnecessary. The court may assess court costs against the person who requested the test if the court finds that there was not reasonable cause for the request.

(h) The department or the department's designee shall inform the person who requested the order of the results of the test. If the person subject to the order is found to have a reportable disease, the department or the department's designee shall inform that person and the person who requested the order of the need for medical follow-up and counseling services. The department or the department's designee shall develop protocols for coding test specimens to ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete.

(i) HIV counseling and testing conducted under this section must conform to the model protocol on HIV counseling and testing prescribed by the department.

(j) For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to a reportable disease, including HIV infection, must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease, including HIV infection.

(k) A person listed in Subsection (b) who may have been exposed to a reportable disease, including HIV infection, may not be required to be tested.

(l) In this section "HIV" and "test result" have the meanings assigned by Section 81.101.

§81.051. Partner Notification Programs; HIV Infection

(a) The department shall establish programs for partner notification and referral services.

(b) The partner notification services offered by health care providers participating in a program shall be made available and easily accessible to all persons with clinically validated HIV seropositive status.

(c) If a person with HIV infection voluntarily discloses the name of a partner, that information is confidential. Partner names may be used only for field investigation and notification.

(d) An employee of a partner notification program shall make the notification. The employee shall inform the person who is named as a partner of the:

- (1) methods of transmission and prevention of HIV infection;
- (2) telephone numbers and addresses of HIV antibody testing sites; and
- (3) existence of local HIV support groups, mental health services, and medical facilities.

(e) The employee may not disclose:

- (1) the name of or other identifying information concerning the identity of the person who gave the partner's name; or
- (2) the date or period of the partner's exposure.

(f) If the person with HIV infection also makes the notification, the person should provide the information listed in Subsection (d).

(g) A partner notification program shall be carried out as follows:

(1) a partner notification program shall make the notification of a partner of a person with HIV infection in the manner authorized by this section regardless of whether the person with HIV infection who gave the partner's name consents to the notification; and

(2) a health care professional shall notify the partner notification program when the health care professional knows the HIV+ status of a patient and the health care professional has actual knowledge of possible transmission of HIV to a third party. Such notification shall be carried out in the manner authorized in this section and Section 81.103.

(h) A health care professional who fails to make the notification required by Subsection (g) is immune from civil or criminal liability for failure to make that notification.

(i) A partner notification program shall provide counseling, testing, or referral services to a person with HIV infection regardless of whether the person discloses the names of any partners.

(j) A partner notification program shall routinely evaluate the performance of counselors and other program personnel to ensure that high quality services are being delivered. A program shall adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control of the United States Public Health Service for professionals participating in the program.

(k) In this section, "HIV" has the meaning assigned by Section 81.101.

§81.052. Reports and Analyses Concerning AIDS and HIV Infection

(a) The department shall ensure timely and accurate reporting under this chapter of information relating to acquired immune deficiency syndrome and human immunodeficiency virus infection.

(b) The department shall routinely analyze and determine trends in incidence and prevalence of AIDS and HIV infection by region, age, gender, race, ethnicity, transmission category, and other factors as appropriate.

(c) The department shall annually project the number of AIDS cases expected in this state based on the reports.

(d) The department shall make available epidemiologic projections and other analyses, including comparisons of Texas and national trends, to state and local agencies for use in planning, developing, and evaluating AIDS and HIV-related programs and services.

SUBCHAPTER D.
INVESTIGATION AND INSPECTION

§81.061. Investigation

(a) The department shall investigate the causes of communicable disease and methods of prevention.

(b) The department may require special investigations of specified cases of disease to evaluate the status in this state of epidemic, endemic, or sporadic diseases. Each health authority shall provide information on request according to the department's written instructions.

(c) The department may investigate the existence of communicable disease in the state to determine the nature and extent of the disease and to formulate and evaluate the control measures used to protect the public health. A person shall provide records and other information to the department on request according to the department's written instructions.

§81.062. Witnesses; Documents

(a) For the purpose of an investigation under Section 81.061(c), the department may administer oaths, summon witnesses, and compel the attendance of a witness or the production of a document. The department may request the assistance of a county or district court to compel the attendance of a summoned witness or the production of a requested document at a hearing.

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to appear at a hearing or proceeding under this section conducted outside the witness's or deponent's county of residence is entitled to a travel and per diem allowance. The board by rule shall set the allowance in an amount not to exceed the travel and per diem allowance authorized for state employees traveling in this state on official business.

§81.063. Samples

(a) A person authorized to conduct an investigation under this subchapter may take samples of materials present on the premises, including soil, water, air, unprocessed or processed foodstuffs, manufactured clothing, pharmaceuticals, and household goods.

(b) A person who takes a sample under this section shall offer a corresponding sample to the person in control of the premises for independent analysis.

(c) A person who takes a sample under this section may reimburse or offer to reimburse the owner for the materials taken. The reimbursement may not exceed the actual monetary loss to the owner.

§81.064. Inspection

(a) The department or a health authority may enter at reasonable times and inspect within reasonable limits a public place in the performance of that person's duty to prevent or control the entry into or spread in this state of communicable disease by enforcing this chapter or the rules of the board adopted under this chapter.

(b) In this section, "a public place" means all or any portion of an area, building or other structure, or conveyance that is not used for private residential purposes, regardless of ownership.

(c) Evidence gathered during an inspection by the department or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

§81.065. Right of Entry

(a) For an investigation or inspection, the commissioner, an employee of the department, or a health authority has the right of entry on land or in a building, vehicle, watercraft, or aircraft and the right of access to an individual, animal, or object that is in isolation, detention, restriction, or quarantine instituted by the commissioner, an employee of the department, or a health authority or instituted voluntarily on instructions of a private physician.

(b) Evidence gathered during an entry by the commissioner, department, or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

§81.066. Concealing Communicable Disease or Exposure to Communicable Disease; Criminal Penalty

(a) A person commits an offense if the person knowingly conceals or attempts to conceal from the board, a health authority, or a peace officer, during the course of an investigation under this chapter, the fact that:

(1) the person has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health; or

(2) a minor child or incompetent adult of whom the person is a parent, managing conservator, or guardian has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health.

(b) An offense under this section is a Class B misdemeanor.

§81.067. Concealing, Removing, or Disposing of an Infected or Contaminated Animal, Object, Vehicle, Watercraft, or Aircraft; Criminal Penalty

(a) A person commits an offense if the person knowingly conceals, removes, or disposes of an infected or contaminated animal, object, vehicle, watercraft, or aircraft that is the subject of an investigation under this chapter by the department, a health authority, or a peace officer.

(b) An offense under this Section is a Class B misdemeanor.

§81.068. Refusing Entry or Inspection; Criminal Penalty

(a) A person commits an offense if the person knowingly refuses or attempts to refuse entry to the department, a health authority, or a peace officer on presentation of a valid search warrant to investigate, inspect, or take samples on premises controlled by the person or by an agent of the person acting on the person's instruction.

(b) A person commits an offense if the person knowingly refuses or attempts to refuse inspection under Section 81.064 or entry or access under Section 81.065.

(c) An offense under this section is a Class A misdemeanor.

SUBCHAPTER E.

CONTROL

§81.081. Board's Duty

The board shall impose control measures to prevent the spread of disease in the exercise of its power to protect the public health.

§81.082. Administration of Control Measures

(a) A health authority has supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the department. Control measures imposed by a health authority must be consistent with, and at least as stringent as, the control measure standards in rules adopted by the board.

(b) A communicable disease control measure imposed by a health authority in the health authority's jurisdiction may be amended, revised, or revoked by the department if the department finds that the modification is necessary or desirable in the administration of a regional or statewide public health program or policy. A control measure imposed by the department may not be modified or discontinued until the department authorizes the action.

- (c) The control measures may be imposed on an individual, animal, place, or object, as appropriate.
- (d) A declaration of a public health disaster may continue for not more than 30 days. A public health disaster may be renewed one time by the commissioner for an additional 30 days.
- (e) The governor may terminate a declaration of a public health disaster at any time.
- (f) In this section, “control measures” includes:
- (1) immunization;
 - (2) detention;
 - (3) restriction;
 - (4) disinfection;
 - (5) decontamination;
 - (6) isolation;
 - (7) quarantine;
 - (8) disinfestation;
 - (9) chemoprophylaxis;
 - (10) preventive therapy;
 - (11) prevention; and
 - (12) education.

§81.083. Application of Control Measures to Individual

- (a) Any person, including a physician, who examines or treats an individual who has a communicable disease shall instruct the individual about:
- (1) measures for preventing re-infection and spread of the disease; and
 - (2) the necessity for treatment until the individual is cured or free from the infection.
- (b) If the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual, or the individual’s parent, legal guardian, or managing conservator if the individual is a minor, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

(c) An order under this section must be in writing and be delivered personally or by registered or certified mail to the individual or to the individual's parent, legal guardian, or managing conservator if the individual is a minor.

(d) An order under this section is effective until the individual is no longer infected with a communicable disease or, in the case of a suspected disease, expiration of the longest usual incubation period for the disease.

(e) An individual may be subject to court orders under Subchapter G if the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and:

(1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section; or

(2) a public health disaster exists, regardless of whether the department or health authority has issued a written order and the individual has indicated that the individual will not voluntarily comply with control measures.

(f) An individual who is the subject of court orders under Subchapter G shall pay the expense of the required medical care and treatment except as provided by Subsections (g)–(i).

(g) A county or hospital district shall pay the medical expenses of a resident of the county or hospital district who is:

(1) indigent and without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program or facility.

(h) The state may pay the medical expenses of a nonresident individual who is:

(1) indigent and without the financial means to pay for part or all of the required medical care and treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program.

(i) The provider of the medical care and treatment under Subsection (h) shall certify the reasonable amount of the required medical care to the comptroller. The comptroller shall issue a warrant to the provider of the medical care and treatment for the certified amount.

(j) The department may:

(1) return a nonresident individual involuntarily hospitalized in this state to the program agency in the state in which the individual resides; and

(2) enter into reciprocal agreements with the proper agencies of other states to facilitate the return of individuals involuntarily hospitalized in this state.

§81.084. Application of Control Measures to Property

(a) If the department or a health authority has reasonable cause to believe that property in its jurisdiction is or may be infected or contaminated with a communicable disease, the department or health authority may place the property in quarantine for the period necessary for a medical examination or technical analysis of samples taken from the property to determine if the property is infected or contaminated. The department or health authority may tag an object for identification with a notice of possible infection or contamination.

(b) The department or health authority shall send notice of its action by registered or certified mail or by personal delivery to the person who owns or controls the property. If the property is land or a structure or an animal or other property on the land, the department or health authority shall also post the notice on the land and at a place convenient to the public in the county courthouse. If the property is infected or contaminated as a result of a public health disaster, the department or health authority is not required to provide notice under this subsection.

(c) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the property is found not to be infected or contaminated. The department or health authority by written order may require the person who owns or controls the property to impose control measures that are technically feasible to disinfect or decontaminate the property if the property is found to be infected or contaminated.

(d) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the control measures are effective. If the control measures are ineffective or if there is not a technically feasible control measure available for use, the department or health authority may continue the quarantine and order the person who owns or controls the property:

- (1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;
 - (2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or
 - (3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the quarantine is removed by the board or health authority.
- (d-1) In a public health disaster, the department or health authority by written order may require a person who owns or controls property to impose control measures that are technically feasible to disinfect or decontaminate the property or, if technically feasible control measures are not available, may order the person who owns or controls the property:
- (1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;
 - (2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or
 - (3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the department or health authority authorizes entry into the structure or property.
- (e) The department or health authority may petition the county or district court of the county in which the property is located for orders necessary for public health if:
- (1) a person fails or refuses to comply with the orders of the department or health authority as required by this section; and
 - (2) the department or health authority has reason to believe that the property is or may be infected or contaminated with a communicable disease that presents an immediate threat to the public health.
- (f) After the filing of a petition, the court may grant injunctive relief for the health and safety of the public.
- (g) The person who owns or controls the property shall pay all expenses of implementing control measures, court costs, storage, and other justifiable expenses. The court may require the person who owns or controls the property to execute a bond in an amount set by the court to ensure the performance of any control measures, restoration, or

destruction ordered by the court. If the property is an object, the bond may not exceed the value of the object in a noninfected or noncontaminated state. The bond shall be returned to the person when the department or health authority informs the court that the property is no longer infected or contaminated or that the property has been destroyed.

(h) If the court finds that the property is not infected or contaminated, it shall order the department or health authority to:

(1) remove the quarantine;

(2) if the property is an object, remove the quarantine tags; and

(3) release the property to the person who owns or controls it.

(i) The department or health authority, as appropriate, shall charge the person who owns or controls the property for the cost of any control measures performed by the department's or health authority's employees. The department shall deposit the payments received to the credit of the general revenue fund to be used for the administration of this chapter. A health authority shall distribute payments received to each county, municipality, or other jurisdiction in an amount proportional to the jurisdiction's contribution to the quarantine and control expense.

(j) In this section, "property" means:

(1) an object;

(2) a parcel of land; or

(3) a structure, animal, or other property on a parcel of land.

(k) In a public health disaster, the department or a health authority may impose additional control measures the department or health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

§81.085. Area Quarantine; Criminal Penalty

(a) If an outbreak of communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine coextensive with the area affected. The commissioner may impose an area quarantine, if the commissioner has reasonable cause to believe that individuals or property in the area may be infected or contaminated with a communicable disease, for the period necessary to determine whether an outbreak of communicable disease has occurred. A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.

- (b) A health authority may not impose an area quarantine until the authority consults with the department. A health authority that imposes an area quarantine shall give written notice to and shall consult with the governing body of each county and municipality in the health authority's jurisdiction that has territory in the affected area as soon as practicable.
- (c) The department may impose additional disease control measures in a quarantine area that the department considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health. Absent preemptive action by the department under this chapter or by the Governor under Chapter 418, Government Code (Texas Disaster Act of 1975), a health authority may impose in a quarantine area under the authority's jurisdiction additional disease control measures that the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.
- (d) If an affected area includes territory in an adjacent state, the department may enter into cooperative agreements with the appropriate officials or agencies of that state to:
- (1) exchange morbidity, mortality, and other technical information;
 - (2) receive extra jurisdictional inspection reports;
 - (3) coordinate disease control measures;
 - (4) disseminate instructions to the population of the area, operators of interstate private or common carriers, and private vehicles in transit across state borders; and
 - (5) participate in other public health activities appropriate to arrest, control, and eradicate the threat to the public health.
- (e) The department or health authority may use all reasonable means of communication to inform persons in the quarantine area of the department's or health authority's orders and instructions during the period of area quarantine. The department or health authority shall publish at least once each week during the area quarantine period, in a newspaper of general circulation in the area, a notice of the orders or instructions in force with a brief explanation of their meaning and effect. Notice by publication is sufficient to inform persons in the area of their rights, duties, and obligations under the orders or instructions.
- (f) The department or, with the department's consent, a health authority may terminate an area quarantine.

(g) To provide isolation and quarantine facilities during an area quarantine, the commissioner's court of a county, the governing body of a municipality, or the governing body of a hospital district may suspend the admission of patients desiring admission for elective care and treatment, except for needy or indigent residents for whom the county, municipality, or district is constitutionally or statutorily required to care.

(h) A person commits an offense if the person knowingly fails or refuses to obey a rule, order, or instruction of the department or an order or instruction of a health authority issued under a department rule and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree.

(i) On request of the department during a public health disaster, an individual shall disclose the individual's immunization information. If the individual does not have updated or appropriate immunizations, the department may take appropriate action during a quarantine to protect that individual and the public from the communicable disease.

§81.086. Application of Control Measures to Private and Common Carriers and Private Conveyances

(a) This section applies to any private or common carrier or private conveyance, including a vehicle, aircraft, or watercraft, while the vehicle or craft is in this state.

(b) If the department or health authority has reasonable cause to believe that a carrier or conveyance has departed from or traveled through an area infected or contaminated with a communicable disease, the department or health authority may order the owner, operator, or authorized agent in control of the carrier or conveyance to:

(1) stop the carrier or conveyance at a port of entry or place of first landing or first arrival in this state; and

(2) provide information on passengers and cargo manifests that includes the details of:

(A) any illness suspected of being communicable that occurred during the journey;

(B) any condition on board the carrier or conveyance during the journey that may lead to the spread of disease; and

(C) any control measures imposed on the carrier or conveyance, its passengers or crew, or its cargo or any other object on board during the journey.

(c) The department or health authority may impose necessary technically feasible control measures under Section 81.083 or 81.084 to prevent the introduction and spread of communicable disease in this state if the department or health authority, after inspection, has reasonable cause to believe that a carrier or conveyance that has departed from or traveled through an infected or contaminated area:

(1) is or may be infected or contaminated with a communicable disease;

(2) has cargo or an object on board that is or may be infected or contaminated with a communicable disease; or

(3) has an individual on board who has been exposed to, or is the carrier of, a communicable disease.

(d) The owner or operator of a carrier or conveyance placed in quarantine by order of the department or health authority, or of a county or district court under Section 81.083 or 81.084, shall bear the expense of the control measures employed to disinfect or decontaminate the carrier or conveyance. The department or health authority, as appropriate, shall charge and be reimbursed for the cost of control measures performed by the department's or health authority's employees. The board shall deposit the reimbursements to the credit of the general revenue fund to be used to administer this chapter. A health authority shall distribute the reimbursements to each county, municipality, or other governmental entity in an amount proportional to that entity's contribution to the quarantine and control expense.

(e) The owner or claimant of cargo or an object on board the carrier or conveyance shall pay the expense of the control measures employed in the manner provided by Section 81.084. The cost of services rendered or provided by the board or health authority is subject to reimbursement as provided by Subsection (d).

(f) A crew member, passenger, or individual on board the carrier or conveyance shall pay the expense of control measures employed under Section 81.083. The state may pay the expenses of an individual who is:

(1) without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, or local medical assistance program, as provided by Section 81.083.

(g) A carrier, a conveyance, cargo, an object, an animal, or an individual placed in quarantine under this section may not be removed from or leave the area of quarantine without the department's or health authority's permission.

(h) If the department or health authority has reasonable cause to believe that a carrier or conveyance is transporting cargo or an object that is or may be infected or contaminated with a communicable disease, the department or health authority may:

(1) require that the cargo or object be transported in secure confinement or sealed in a car, trailer, hold, or compartment, as appropriate, that is secured on the order and instruction of the board or health authority, if the cargo or object is being transported through this state;

(2) require that the cargo or object be unloaded at an alternate location equipped with adequate investigative and disease control facilities if the cargo or object is being transported to an intermediate or ultimate destination in this state that cannot provide the necessary facilities; and

(3) investigate and, if necessary, quarantine the cargo or object and impose any required control measure as authorized by Section 81.084.

(i) The department or health authority may require an individual transported by carrier or conveyance who the department or health authority has reasonable cause to believe has been exposed to or is the carrier of a communicable disease to be isolated from other travelers and to disembark with the individual's personal effects and baggage at the first location equipped with adequate investigative and disease control facilities, whether the person is in transit through this state or to an intermediate or ultimate destination in this state. The department or health authority may investigate and, if necessary, isolate or involuntarily hospitalize the individual until the department or health authority approves the discharge as authorized by Section 81.083.

§81.087. Violation of Control Measure Orders; Criminal Penalty

(a) A person commits an offense if the person knowingly refuses to perform or allow the performance of certain control measures ordered by a health authority or the department under Sections 81.083–81.086.

(b) An offense under this section is a Class B misdemeanor.

§81.088. Removal, Alteration, or Destruction of Quarantine Devices; Criminal Penalty

(a) A person commits an offense if the person knowingly or intentionally:

(1) removes, alters, or attempts to remove or alter an object the person knows is a quarantine device, notice, or security item in a manner that diminishes the effectiveness of the device, notice, or item; or

(2) destroys an object the person knows is a quarantine device, notice, or security item.

(b) An offense under this section is a Class B misdemeanor.

§81.089. Transportation; Criminal Penalty

(a) A person commits an offense if, before notifying the department or health authority at a port of entry or a place of first landing or first arrival in this state, the person knowingly or intentionally:

(1) transports or causes to be transported into this state an object the person knows or suspects may be infected or contaminated with a communicable disease that is a threat to the public health;

(2) transports or causes to be transported into this state an individual who the person knows has or is the carrier of a communicable disease that is a threat to the public health; or

(3) transports or causes to be transported into this state a person, animal, or object in a private or common carrier or a private conveyance that the person knows is or suspects may be infected or contaminated with a communicable disease that is a threat to the public health.

(b) An offense under this section is a Class A misdemeanor, except that if the person acts with the intent to harm or defraud another, the offense is a felony of the third degree.

§81.090. Serologic Testing During Pregnancy

(a) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood at the first examination and visit;

(2) submit the sample to a laboratory approved under this section for:

(A) a standard serologic test for syphilis approved by the board;

(B) a standard serologic test for HIV infection approved by the board; and

(C) a standard serologic test for hepatitis B infection approved by the board; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

- (b) A successor is presumed to have complied with this section.
- (c) A physician or other person in attendance at a delivery shall:
- (1) take or cause to be taken a sample of blood from the mother on admission for delivery; and
 - (2) submit the sample to a laboratory approved under this section for:
 - (A) a standard serologic test for syphilis approved by the board;
 - (B) a standard serologic test for HIV infection approved by the board; and
 - (C) a standard serologic test for hepatitis B infection approved by the board.
- (d) A state, county, municipal, or private laboratory that conducts standard serologic tests on blood samples submitted under this section must be approved by the department. For the purpose of approving laboratories, the board shall adopt rules establishing:
- (1) minimum standards of proficiency for a laboratory that conducts standard serologic tests;
 - (2) procedures for the inspection and monitoring of laboratories conducting standard serologic tests;
 - (3) criteria for the issuance, suspension, and revocation of laboratory proficiency certification to perform standard serologic tests; and
 - (4) criteria for approval and disapproval of serologic tests and procedures.
- (e) The commissioner shall provide each county clerk with the names of the approved laboratories in the county and shall notify the county clerk of any additions, suspensions, or revocations of proficiency approval.
- (f) A state, county, or municipal laboratory shall execute a test required by this section and submit a report to the physician without charge.
- (g) Repealed by Acts 1993, 73rd Leg., ch. 30, §3, eff. Sept. 1, 1993.
- (h) The department is not required to approve a laboratory under Subsection (d) or provide a list of approved laboratories under Subsection (e) as long as the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Section 263a), and subsequent amendments, are in effect.

(i) Before conducting or causing to be conducted a standard serologic test for HIV infection under this section, the physician or other person shall advise the woman that the result of a test taken under this section is confidential as provided by Subchapter F, but that the test is not anonymous. The physician or other person shall explain the difference between a confidential and an anonymous test to the woman and that an anonymous test may be available from another entity. The physician or other person shall make the information available in another language, if needed, and if resources permit. The information shall be provided by the physician or another person, as needed, in a manner and in terms understandable to a person who may be illiterate if resources permit.

(j) The result of a standard test for HIV infection under Subsection (a)(2)(B) or (c)(2)(B) is a test result for purposes of Subchapter F.

(k) Before the blood sample is taken, the health care provider shall distribute to the patient printed materials about AIDS, HIV, hepatitis B, and syphilis. A health care provider shall verbally notify the patient that an HIV test shall be performed if the patient does not object. If the patient objects, the patient shall be referred to an anonymous testing facility or instructed about anonymous testing methods. The health care provider shall note on the medical records that the distribution of printed materials was made and that verbal notification was given. The materials shall be provided to the health care provider by the Department of State Health Services and shall be prepared and designed to inform the patients about:

(1) the incidence and mode of transmission of AIDS, HIV, hepatitis B, and syphilis;

(2) how being infected with HIV, AIDS, hepatitis B, or syphilis could affect the health of their child;

(3) the available cure for syphilis;

(4) the available treatment to prevent maternal-infant HIV transmission; and

(5) methods to prevent the transmission of the HIV virus, hepatitis B, and syphilis.

(l) A physician or other person may not conduct a standard test for HIV infection under Subsection (a)(2)(B) or (c)(2)(B) if the woman objects.

(m) If a screening test and a confirmatory test conducted under this section show that the woman is or may be infected with HIV, hepatitis B, or syphilis, the physician or other person who submitted the sample for the test shall provide or make available to the woman disease-specific information on the disease diagnosed, including:

(1) information relating to treatment of HIV infection, acquired immune deficiency syndrome, hepatitis B, or syphilis, which must be in another language, if needed, and must be presented, as necessary, in a manner and in terms understandable to a person who may be illiterate if resources permit; and

(2) counseling under Section 81.109, if HIV infection or AIDS is diagnosed.

(n) A physician or other person may comply with the requirements of Subsection (m)(1) by referring the woman to an entity that provides treatment for individuals infected with the disease diagnosed.

(o) In this section, "HIV" has the meaning assigned by Section 81.101.

§81.091. Ophthalmia Neonatorum Prevention; Criminal Penalty

(a) A physician, nurse, midwife, or other person in attendance at childbirth shall use or cause to be used prophylaxis approved by the board to prevent ophthalmia neonatorum.

(b) A midwife is responsible for the administration of the prophylaxis to each infant the midwife delivers by:

(1) administering the prophylaxis under standing delegation orders issued by a licensed physician; or

(2) requiring the prophylaxis to be administered by an appropriately licensed and trained individual under standing delegation orders issued by a licensed physician.

(c) Subject to the availability of funds, the department shall furnish prophylaxis approved by the board free of charge to:

(1) health care providers if the newborn's financially responsible adult is unable to pay; and

(2) a midwife identified under Chapter 203, Occupations Code, who requests prophylaxis for administration under standing delegation orders issued by a licensed physician under Subsection (b) and subject to the provisions of Subchapter A, Chapter 157, Occupations Code.

(d) If a physician is not available to issue a standing delegation order or if no physician will agree to issue a standing delegation order, a midwife shall administer or cause to be administered by an appropriately trained and licensed individual prophylaxis approved by the Texas Board of Health to prevent ophthalmia neonatorum to each infant that the midwife delivers.

(e) Administration and possession by a midwife of prophylaxis under this section is not a violation of Chapter 483.

(f) A health care provider may not charge for prophylaxis received free from the department.

(g) A person commits an offense if the person is a physician or other person in attendance on a pregnant woman either during pregnancy or at delivery and fails to perform a duty required by this section. An offense under this section is a Class B misdemeanor.

(h) In this section, "financially responsible adult" means a parent, guardian, spouse, or any other person whom the laws of this state hold responsible for the debts incurred as a result of hospitalization or treatment.

§81.092. Contracts for Services

The department may contract with a physician to provide services to persons infected or reasonably suspected of being infected with a sexually transmitted disease or tuberculosis if:

- (1) local or regional health department services are not available;
- (2) the person in need of examination or treatment is unable to pay for the services; and
- (3) there is an immediate need for examination or treatment of the person.

§81.093. Persons Prosecuted for Certain Crimes

(a) A court may direct a person convicted of an offense under Section 43.02, Penal Code, under Chapter 481 (Texas Controlled Substances Act), or under Sections 485.031 through 485.035 to be subject to the control measures of Section 81.083 and to the court-ordered management provisions of Subchapter G.

(b) The court shall order that a pre-sentencing report be prepared under Section 9, Article 42.12, Code of Criminal Procedure, to determine if a person convicted of an offense under Chapter 481 (Texas Controlled Substances Act) or under Sections 485.031 through 485.035 should be subject to Section 81.083 and Subchapter G.

(c) On the request of a prosecutor who is prosecuting a person under Section 22.012, Penal Code, the court shall release to the prosecutor the pre-sentencing report and a statement as to whether the court directed the person to be subject to control measures and court-ordered management for human immunodeficiency virus infection or acquired immune deficiency syndrome.

§81.094. Testing by Hospitals of Persons Indicted for Certain Crimes

A hospital shall perform a medical procedure or test on a person if a court orders the hospital to perform the procedure or test on a person whom the court orders to undergo the procedure or test under Article 21.31, Code of Criminal Procedure. The procedure or test is a cost of court.

§81.095. Testing for Accidental Exposure

(a) In a case of accidental exposure of a health care worker to blood or other body fluids of a patient in a licensed hospital, the hospital, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C.

(b) This subsection applies only in a case of accidental exposure of certified emergency medical services personnel, a firefighter, a peace officer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital to blood or other body fluids of a patient who is transported to a licensed hospital. The hospital receiving the patient, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C if the report shows there is significant risk to the person exposed. The organization that employs the person or for which the person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test. The hospital shall provide the test results to the department or to the local health authority, which are responsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed and, if applicable, the patient regarding the test results. The hospital shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital to provide any further testing, treatment, or services or to perform further procedures.

(c) A test conducted under this section may be performed without the patient's specific consent.

(d) The facility shall have a policy concerning the disclosure of the result of the testing as authorized or required by law.

(e) The facility shall abide by all patient confidentiality standards as set out in Section 81.046.

SUBCHAPTER F.

TESTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME AND RELATED DISORDERS

§81.101. Definitions

In this subchapter:

- (1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.
- (2) "HIV" means human immunodeficiency virus.
- (3) "Bona fide occupational qualification" means a qualification:
 - (A) that is reasonably related to the satisfactory performance of the duties of a job; and
 - (B) for which there is a reasonable cause for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety.
- (4) "Blood bank" means a blood bank, blood center, regional collection center, tissue bank, transfusion service, or other similar facility licensed by the Bureau of Biologics of the United States Food and Drug Administration, accredited for membership in the American Association of Blood Banks, or qualified for membership in the American Association of Tissue Banks.
- (5) "Test result" means any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

§81.102. Tests; Criminal Penalty

- (a) A person may not require another person to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:
 - (1) the medical procedure or test is required under Subsection (d), under Section 81.050, or under Article 21.31, Code of Criminal Procedure;
 - (2) the medical procedure or test is required under Section 81.090, and no objection has been made under Section 81.090(l);

- (3) the medical procedure or test is authorized under Article 21.21-4, Insurance Code;
- (4) a medical procedure is to be performed on the person that could expose health care personnel to AIDS or HIV infection, according to board guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted; or
- (5) the medical procedure or test is necessary:
- (A) as a bona fide occupational qualification and there is not a less discriminatory means of satisfying the occupational qualification;
- (B) to screen blood, blood products, body fluids, organs, or tissues to determine suitability for donation;
- (C) in relation to a particular person under this chapter;
- (D) to manage accidental exposure to blood or other body fluids, but only if the test is conducted under written infectious disease control protocols adopted by the health care agency or facility;
- (E) to test residents and clients of residential facilities of the Texas Department of Mental Health and Mental Retardation, but only if:
- (i) the test result would change the medical or social management of the person tested or others who associated with that person; and
- (ii) the test is conducted in accordance with guidelines adopted by the residential facility or the Texas Department of Mental Health and Mental Retardation and approved by the department; or
- (F) to test residents and clients of residential facilities of the Texas Youth Commission, but only if:
- (i) the test result would change the medical or social management of the person tested or others who associate with that person; and
- (ii) the test is conducted in accordance with guidelines adopted by the Texas Youth Commission.
- (b) An employer who alleges that a test is necessary as a bona fide occupational qualification has the burden of proving that allegation.
- (c) Protocols adopted under Subsection (a)(4)(D) must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with this chapter.

(d) The board may adopt emergency rules for mandatory testing for HIV infection if the commissioner files a certificate of necessity with the board that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. The rules must provide for:

(1) the narrowest application of HIV testing necessary for the protection of the public health;

(2) procedures and guidelines to be followed by an affected entity or state agency that clearly specify the need and justification for the testing, specify methods to be used to assure confidentiality, and delineate responsibility and authority for carrying out the recommended actions;

(3) counseling of persons with seropositive test results; and

(4) confidentiality regarding persons tested and their test results.

(e) This section does not create a duty to test for AIDS and related disorders or a cause of action for failure to test for AIDS and related disorders.

(f) A person who requires a medical procedure or test in violation of this section commits an offense. An offense under this subsection is a Class A misdemeanor.

§81.103. Confidentiality; Criminal Penalty

(a) A test result is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section.

(b) A test result may be released to:

(1) the department under this chapter;

(2) a local health authority if reporting is required under this chapter;

(3) the Centers for Disease Control of the United States Public Health Service if reporting is required by federal law or regulation;

(4) the physician or other person authorized by law who ordered the test;

(5) a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare;

(6) the person tested or a person legally authorized to consent to the test on the person's behalf;

- (7) the spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS;
- (8) a person authorized to receive test results under Article 21.31, Code of Criminal Procedure, concerning a person who is tested as required or authorized under that article; and
- (9) a person exposed to HIV infection as provided by Section 81.050.
- (c) The court shall notify persons receiving test results under Subsection (b)(8) of the requirements of this section.
- (d) A person tested or a person legally authorized to consent to the test on the person's behalf may voluntarily release or disclose that person's test results to any other person, and may authorize the release or disclosure of the test results. An authorization under this subsection must be in writing and signed by the person tested or the person legally authorized to consent to the test on the person's behalf. The authorization must state the person or class of persons to whom the test results may be released or disclosed.
- (e) A person may release or disclose a test result for statistical summary purposes only without the written consent of the person tested if information that could identify the person is removed from the report.
- (f) A blood bank may report positive blood test results indicating the name of a donor with a possible infectious disease to other blood banks if the blood bank does not disclose the infectious disease that the donor has or is suspected of having. A report under this subsection is not a breach of any confidential relationship.
- (g) A blood bank may report blood test results to the hospitals where the blood was transfused, to the physician who transfused the infected blood, and to the recipient of the blood. A blood bank may also report blood test results for statistical purposes. A report under this subsection may not disclose the name of the donor or person tested or any information that could result in the disclosure of the donor's or person's name, including an address, social security number, a designated recipient, or replacement information.
- (h) A blood bank may provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.
- (i) An employee of a health care facility whose job requires the employee to deal with permanent medical records may view test results in the performance of the employee's duties under reasonable health care facility practices. The test results viewed are confidential under this chapter.

(j) A person commits an offense if, with criminal negligence and in violation of this section, the person releases or discloses a test result or other information or allows a test result or other information to become known. An offense under this subsection is a Class A misdemeanor.

§81.104. Injunction; Civil Liability

(a) A person may bring an action to restrain a violation or threatened violation of Section 81.102 or 81.103.

(b) A person who violates Section 81.102 or who is found in a civil action to have negligently released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

(1) actual damages;

(2) a civil penalty of not more than \$5,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

(c) A person who is found in a civil action to have willfully released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

(1) actual damages;

(2) a civil penalty of not less than \$5,000 nor more than \$10,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

(d) Each release or disclosure made, or allowance of a test result to become known, in violation of this subchapter constitutes a separate offense.

(e) A defendant in a civil action brought under this section is not entitled to claim any privilege as a defense to the action.

§81.105. Informed Consent

(a) Except as otherwise provided by law, a person may not perform a test designed to identify HIV or its antigen or antibody without first obtaining the informed consent of the person to be tested.

(b) Consent need not be written if there is documentation in the medical record that the test has been explained and the consent has been obtained.

§81.106. General Consent

(a) A person who has signed a general consent form for the performance of medical tests or procedures is not required to also sign or be presented with a specific consent form relating to medical tests or procedures to determine HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS that will be performed on the person during the time in which the general consent form is in effect.

(b) Except as otherwise provided by this chapter, the result of a test or procedure to determine HIV infection, antibodies to HIV, or infection with any probable causative agent of AIDS performed under the authorization of a general consent form in accordance with this section may be used only for diagnostic or other purposes directly related to medical treatment.

§81.107. Consent to Test for Certain Accidental Exposures

(a) In a case of accidental exposure to blood or other body fluids under Section 81.102(a)(4)(D), the health care agency or facility may test a person who may have exposed the health care worker to HIV without the person's specific consent to the test.

(b) A test under this section may be done only if:

(1) the test is done according to protocols established as provided by Section 81.102(c); and

(2) those protocols ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete and the person who may have been exposed is notified of the result.

(c) A test result under this section is subject to the confidentiality provisions of this chapter.

§81.108. Testing by Insurers

The Insurance Code and any rules adopted by the State Board of Insurance exclusively govern all practices of insurers in testing applicants to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

§81.109. Counseling Required for Positive Test Results

(a) A positive test result may not be revealed to the person tested without giving that person the immediate opportunity for individual, face-to-face post-test counseling about:

- (1) the meaning of the test result;
- (2) the possible need for additional testing;
- (3) measures to prevent the transmission of HIV;
- (4) the availability of appropriate health care services, including mental health care, and appropriate social and support services in the geographic area of the person's residence;
- (5) the benefits of partner notification; and
- (6) the availability of partner notification programs.

(b) Post-test counseling should:

- (1) increase a person's understanding of HIV infection;
- (2) explain the potential need for confirmatory testing;
- (3) explain ways to change behavior conducive to HIV transmission;
- (4) encourage the person to seek appropriate medical care; and
- (5) encourage the person to notify persons with whom there has been contact capable of transmitting HIV.

(c) Subsection (a) does not apply if:

- (1) a report of a test result is used for statistical or research purposes only and any information that could identify the person is removed from the report; or
- (2) the test is conducted for the sole purpose of screening blood, blood products, bodily fluids, organs, or tissues to determine suitability for donation.

(d) A person who is injured by an intentional violation of this section may bring a civil action for damages and may recover for each violation from a person who violates this section:

- (1) \$1,000 or actual damages, whichever is greater; and
- (2) reasonable attorney fees.

(e) This section does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a health care provider's violation of this section.

(f) A person performing a test to show HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS is not liable under Subsection (d) for failing to provide post-test counseling if the person tested does not appear for the counseling.

SUBCHAPTER G.

COURT ORDERS FOR MANAGEMENT OF PERSONS WITH COMMUNICABLE DISEASES

§81.151. Application for Court Order

(a) At the request of the health authority, a municipal, county, or district attorney shall file a sworn written application for a court order for the management of a person with a communicable disease. At the request of the department, the attorney general shall file a sworn written application for a court order for the management of a person with a communicable disease.

(b) The application must be filed with the district court in the county in which the person:

- (1) resides;
- (2) is found; or
- (3) is receiving court-ordered health services.

(c) If the application is not filed in the county in which the person resides, the court may, on request of the person or the person's attorney and if good cause is shown, transfer the application to that county.

(d) A copy of written orders made under Section 81.083, if applicable, and a medical evaluation must be filed with the application, except that a copy of the written orders need not be filed with an application for outpatient treatment.

§81.152. Form of Application

- (a) An application for a court order for the management of a person with a communicable disease must be styled using the person's initials and not the person's full name.
- (b) The application must state whether the application is for temporary or extended management of a person with a communicable disease.
- (c) Any application must contain the following information according to the applicant's information and belief:
- (1) the person's name and address;
 - (2) the person's county of residence in this state;
 - (3) a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and that the person meets the criteria of this chapter for court orders for the management of a person with a communicable disease; and
 - (4) a statement, to be included only in an application for inpatient treatment, that the person fails or refuses to comply with written orders of the department or health authority under Section 81.083, if applicable.

§81.153. Appointment of Attorney

- (a) The judge shall appoint an attorney to represent a person not later than the 24th hour after the time an application for a court order for the management of a person with a communicable disease is filed if the person does not have an attorney. The judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the person's primary language.
- (b) The person's attorney shall receive all records and papers in the case and is entitled to have access to all hospital and physicians' records.

§81.154. Setting on Application

- (a) The judge or a magistrate designated under this chapter shall set a date for a hearing to be held within 14 days after the date on which the application is served on the person.
- (b) The hearing may not be held within the first three days after the application is filed if the person or the person's attorney objects.
- (c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is served on the person.

§81.155. Notice

(a) The person and the person's attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to:

(1) the person's parent, if the person is a minor;

(2) the person's appointed guardian, if the person is the subject of a guardianship; or

(3) each managing and possessory conservator, that has been appointed for the person.

(c) The court shall appoint a guardian ad litem for a minor if the parent cannot be located and a guardian or conservator has not been appointed.

§81.156. Disclosure of Information

(a) The person's attorney may request information from the attorney general or the municipal, county, or district attorney, as appropriate, in accordance with this section if the attorney cannot otherwise obtain the information. The attorney must request the information at least 48 hours before the time set for the hearing.

(b) If the person's attorney requests the information in accordance with Subsection (a), the attorney general or the municipal, county, or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1) the provisions of this chapter that will be relied on at the hearing to establish that the person requires a court order for the temporary or extended management of a person with a communicable disease;

(2) the name, address, and telephone number of each witness who may testify at the hearing;

(3) a brief description of the reasons why temporary or extended management is required; and

(4) a list of any acts committed by the person that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under this chapter if the admission would not deprive the person of a fair opportunity to contest the evidence or testimony.

§81.157. District Court Jurisdiction

(a) A proceeding under this chapter must be held in a district court of the county in which the person is found, resides, or is receiving court-ordered health services.

(b) If a person subject to an order for temporary management is receiving services in a county other than the county in which the court that entered the temporary order is located and requires extended management, the county in which the temporary order was issued shall pay the expenses of transporting the person back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the person is receiving services to hold the hearing on the application for extended order before the temporary order expires.

§81.158. Affidavit of Medical Evaluation

(a) An affidavit of medical evaluation must be dated and signed by the commissioner or the commissioner's designee, or by a health authority with the concurrence of the commissioner or the commissioner's designee. The certificate must include:

- (1) the name and address of the examining physician, if applicable;
- (2) the name and address of the person examined or to be examined;
- (3) the date and place of the examination, if applicable;
- (4) a brief diagnosis of the examined person's physical and mental condition, if applicable;
- (5) the period, if any, during which the examined person has been under the care of the examining physician;
- (6) an accurate description of the health treatment, if any, given by or administered under the direction of the examining physician; and
- (7) the opinion of the health authority or department and the reason for that opinion, including laboratory reports, that:
 - (A) the examined person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health; and
 - (B) as a result of that communicable disease the examined person:
 - (i) is likely to cause serious harm to himself; or
 - (ii) will, if not examined, observed, or treated, continue to endanger public health.

(b) The department or health authority must specify in the affidavit each criterion listed in Subsection (a)(7)(B) that in the opinion of the department or health authority applies to the person.

(c) If the affidavit is offered in support of an application for extended management, the affidavit must also include the department's or health authority's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the affidavit is offered in support of a motion for a protective custody order, the affidavit must also include the department's or health authority's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior to the extent that the examined person cannot remain at liberty.

(e) The affidavit must include the detailed basis for each of the department's or health authority's opinions under this section.

§81.159. Designation of Facility

(a) The commissioner shall designate health care facilities throughout the state that are capable of providing services for the examination, observation, isolation, or treatment of persons having or suspected of having a communicable disease. However, the commissioner may not designate a nursing home or custodial care home required to be licensed under Chapter 242.

(b) The health authority shall select a designated facility in the county in which the application is filed. If no facility is designated in the county, the commissioner shall select the facility.

(c) This section does not relieve a county of its responsibility under other provisions of this chapter or applicable law for providing health care services.

(d) A designated facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) This section does not apply to a person for whom treatment in a private health facility is proposed.

§81.160. Liberty Pending Hearing

The person who is the subject of an application for management is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this chapter.

§81.161. Motion for Order of Protective Custody

- (a) A motion for an order of protective custody may be filed only in the court in which an application for a court order for the management of a person with a communicable disease is pending.
- (b) The motion may be filed by the municipal, county, or district attorney on behalf of the health authority. The motion shall be filed by the attorney general at the request of the department.
- (c) The motion must state that:
- (1) the department or health authority has reason to believe and does believe that the person meets the criteria authorizing the court to order protective custody; and
 - (2) the belief is derived from:
 - (A) the representations of a credible person;
 - (B) the conduct of the person who is the subject of the motion; or
 - (C) the circumstances under which the person is found.
- (d) The motion must be accompanied by an affidavit of medical evaluation.
- (e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

§81.162. Issuance of Order

- (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:
- (1) that the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and
 - (2) that the person fails or refuses to comply with the written orders of the health authority or the department under Section 81.083, if applicable.
- (b) Noncompliance with orders issued under Section 81.083 may be demonstrated by the person's behavior to the extent that the person cannot remain at liberty.
- (c) The judge or magistrate may consider only the application and affidavit in making a determination that the person meets the criteria prescribed

by Subsection (a). If only the application and certificate are considered the judge or magistrate must determine that the conclusions of the health authority or department are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and affidavit only.

(e) The judge or magistrate may issue a protective custody order for a person who is charged with a criminal offense if the person meets the requirements of this section and the head of the facility designated to detain the person agrees to the detention.

§81.163. Apprehension Under Order

(a) A protective custody order shall direct a peace officer to take the person who is the subject of the order into protective custody and transport the person immediately to an appropriate inpatient health facility that has been designated by the commissioner as a suitable place.

(b) If an appropriate inpatient health facility is not available, the person shall be transported to a facility considered suitable by the health authority.

(c) The person shall be detained in the facility until a hearing is held under Section 81.165.

(d) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health facility without the consent of the head of the facility.

§81.164. Appointment of Attorney

(a) The judge or designated magistrate shall appoint an attorney to represent a person who is the subject of a protective custody order who does not have an attorney when the order is signed.

(b) Within a reasonable time before a hearing is held under Section 81.165, the court that ordered the protective custody shall provide the person and the person's attorney with a written notice that states:

- (1) that the person has been placed under a protective custody order;
- (2) the grounds for the order; and
- (3) the time and place of the hearing to determine probable cause.

§81.165. Probable Cause Hearing

(a) A hearing must be held to determine if:

(1) there is probable cause to believe that a person under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the hearing on a court order for the management of a person with a communicable disease; and

(2) the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to public health.

(b) The hearing must be held not later than 72 hours after the time that the person was detained under the protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions that threaten the safety of the person or another essential party to the hearing.

(c) A magistrate or a master appointed by the presiding judge shall conduct the hearing. The master is entitled to reasonable compensation.

(d) The person and his attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the person presents a substantial risk of serious harm to himself or others.

(e) The magistrate or master may consider evidence that may not be admissible or sufficient in a subsequent commitment hearing, including letters, affidavits, and other material.

(f) The state may prove its case on the health authority's or department's affidavit of medical evaluation filed in support of the initial motion.

§81.166. Order for Continued Detention

(a) The magistrate or master shall order that a person remain in protective custody if the magistrate or master determines after the hearing that an adequate factual basis exists for probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot remain at liberty pending the hearing on the application.

(b) The magistrate or master shall arrange for the person to be returned to the health facility or other suitable place, along with copies of the affidavits and other material submitted as evidence in the hearing and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the district court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 20____, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and his or her attorney _____ have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____ (date of notice).

I have examined the affidavit of medical evaluation and _____ (other evidence considered). Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or herself (yes ____ or no ____) or others (yes ____ or no ____) such that (s)he cannot be at liberty pending final hearing because (s)he is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and (s)he has failed or refused to comply with the orders of the health authority or the Department of State Health Services delivered on _____ (date of service) _____.

§81.167. Detention in Protective Custody

(a) The head of a facility or the facility head's designee shall detain a person under a protective custody order in the facility pending a court order for the management of a person with a communicable disease or until the person is released or discharged under Section 81.168.

(b) A person under a protective custody order shall be detained in an appropriate inpatient health facility that has been designated by the commissioner and selected by the health authority under Section 81.159.

(c) A person under a protective custody order may be detained in a non-medical facility used to detain persons who are charged with or convicted of a crime only with the consent of the medical director of the facility and only if the facility has respiratory isolation capability for airborne

communicable diseases. The person may not be detained in a non-medical facility under this subsection for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 81.165(b) for an extreme weather emergency. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The health authority shall ensure that proper isolation methods are used and medical care is made available to a person who is detained in a non-medical facility under Subsection (c).

§81.168. Release From Detention

(a) The magistrate or master shall order the release of a person under a protective custody order if the magistrate or master determines after the hearing under Section 81.165 that no probable cause exists to believe that the person presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

- (1) the location at which the person was apprehended;
- (2) the person's place of residence in this state; or
- (3) another suitable location.

(c) The head of a facility shall discharge a person held under a protective custody order if:

- (1) the head of the facility does not receive notice within 72 hours after detention begins, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 81.165(b) for an extreme weather emergency that a probable cause hearing was held and the person's continued detention was authorized;
- (2) a final court order for the management of a person with a communicable disease has not been entered within the time prescribed by Section 81.154; or
- (3) the health authority or commissioner determines that the person no longer meets the criteria for protective custody prescribed by Section 81.162.

§81.169. General Provisions Relating to Hearing

(a) Except as provided by Subsection (b), the judge may hold a hearing on an application for a court order for the management of a person with a communicable disease at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the public or the person.

- (b) On the request of the person or the person's attorney, the hearing on the application shall be held in the county courthouse.
- (c) The health authority shall advise the court on appropriate control measures to prevent the transmission of the communicable disease alleged in the application.
- (d) The person is entitled to be present at the hearing. The person or the person's attorney may waive this right.
- (e) The hearing must be open to the public unless the person or the person's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.
- (f) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this chapter.
- (g) The court may consider the testimony of a non-physician health professional in addition to medical testimony.
- (h) The hearing is on the record, and the state must prove each element of the application criteria by clear and convincing evidence.

§81.170. Right to Jury

- (a) A hearing for temporary management must be before the court unless the person or the person's attorney requests a jury.
- (b) A hearing for extended management must be before a jury unless the person or the person's attorney waives the right to a jury.
- (c) A waiver of the right to a jury must be in writing, under oath, and signed by the person and the person's attorney.
- (d) The court may permit a waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made at least seven days before the date on which the hearing is scheduled.
- (e) A court may not require a jury fee.
- (f) The jury shall determine if the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has refused or failed to follow the orders of the health authority. The jury may not make a finding about the type of services to be provided to the person.

§81.171. Release After Hearing

(a) The court shall enter an order denying an application for a court order for temporary or extended management if after a hearing the judge or jury fails to find, from clear and convincing evidence, that the person:

(1) is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health;

(2) has refused or failed to follow the orders of the health authority if the application is for inpatient treatment; and

(3) meets the applicable criteria for orders for the management of a person with a communicable disease.

(b) If the court denies the application, the court shall order the immediate release of a person who is not at liberty.

§81.172. Order for Temporary Management

(a) The judge or jury may determine that a person requires court-ordered examination, observation, isolation, or treatment only if the judge or jury finds, from clear and convincing evidence, that:

(1) the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed or refused to follow the orders of the health authority or department; and

(2) as a result of the communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health.

(b) The judge or jury must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The person or the person's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and the court may admit, as evidence, the affidavit of medical evaluation. The affidavit admitted under this subsection constitutes competent medical testimony, and the court may make its findings solely from the affidavit.

(d) An order for temporary management shall state that examinations, treatment, and surveillance are authorized for a period not longer than 90 days.

(e) The department, with the cooperation of the head of the facility, shall submit to the court a general program of treatment to be provided. The program must be submitted not later than the 14th day after the date the order is issued and must be incorporated into the court order.

§81.173. Order for Extended Management

(a) The jury, or the judge if the right to a jury is waived, may determine that a proposed patient requires court-ordered examination, observation, isolation, or treatment only if the jury or judge finds, from clear and convincing evidence, that:

(1) the person is infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed to follow the orders of the health authority or department;

(2) as a result of that communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health; and

(3) the person's condition is expected to continue for more than 90 days.

(b) The jury or judge must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The court may not make findings solely from the affidavit of medical evaluation, but shall hear testimony. The court may not enter an order for extended management unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical testimony.

(d) An order for extended management shall state that examination, treatment, and surveillance are authorized for not longer than 12 months.

(e) The department, with the cooperation of the head of the facility, shall submit to the court a general program of treatment to be provided. The program must be submitted not later than the 14th day after the date the order is issued and must be incorporated into the court order.

§81.174. Order of Care or Commitment

(a) The judge shall dismiss the jury, if any, after a hearing in which a person is found:

(1) to be infected with or reasonably suspected of being infected with a communicable disease;

(2) to have failed or refused to follow the orders of a health authority or the department if the application is for inpatient treatment; and

(3) to meet the criteria for orders for the management of a patient with a communicable disease.

(b) The judge may hear additional evidence relating to alternative settings for examination, observation, treatment, or isolation before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the appropriate health care facility filed under this chapter.

(d) The judge may enter an order:

(1) committing the person to a health care facility for inpatient care; or

(2) requiring the person to participate in other communicable disease management programs.

§81.175. Court-Ordered Outpatient Services

(a) The court, in an order that directs a person to participate in an outpatient communicable disease program, shall designate a health authority to monitor the person's compliance. The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority in implementing the court orders.

(b) The health authority or the department, with the cooperation of the head of the facility, shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(c) The health authority or department shall inform the court:

(1) if the person fails to comply with the court order; and

(2) of any substantial change in the general program of treatment that occurs before the order expires.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health care facility without the consent of the facility head.

§81.176. Designation of Facility

In a court order for the temporary or extended management of a person with a communicable disease specifying inpatient care, the court shall commit the person to a health care facility designated by the commissioner in accordance with Section 81.159.

§81.177. Commitment to Private Facility

The court may order a person committed to a private health care facility at no expense to the state if the court receives:

- (1) an application signed by the person or the person's guardian or next friend requesting that the person be placed in a designated private health care facility at the person's or applicant's expense; and
- (2) written agreement from the head of the private health care facility to admit the person and to accept responsibility for the person in accordance with this chapter.

§81.178. Commitment to Federal Facility

- (a) A court may order a person committed to a federal agency that operates a health care facility if the court receives written notice from the agency that facilities are available and that the person is eligible for care or treatment in the facility. The court may place the person in the agency's custody for transportation to the health care facility.
- (b) A person admitted under court order to a health care facility operated by a federal agency, regardless of location, is subject to the agency's rules and regulations.
- (c) The head of the health care facility has the same authority and responsibility with respect to the person as the head of a facility.
- (d) The appropriate courts of this state retain jurisdiction to inquire at any time into the person's mental condition and the necessity of the person's continued commitment.

§81.179. Transportation of Person

- (a) The court shall order the sheriff or constable to transport the person to the designated health care facility.
- (b) A female shall be accompanied by a female attendant during conveyance to the health care facility.
- (c) The health authority or department shall instruct the sheriff or constable on procedures that may be necessary in transporting the person to prevent the spread of the disease.

§81.180. Writ of Commitment

The court shall direct the court clerk to issue to the individual authorized to transport the person two writs of commitment requiring the individual to take custody of and transport the person to the designated health care facility.

§81.181. Acknowledgement of Delivery

The head of the facility, after receiving a copy of the writ of commitment and after admitting the person, shall:

- (1) give the individual transporting the person a written statement acknowledging acceptance of the person and of any personal property belonging to the person; and
- (2) file a copy of the statement with the clerk of the committing court.

§81.182. Modification of Order for Inpatient Treatment

(a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall request the court that entered the commitment order to modify the order to provide for outpatient care. At the request of the department, the attorney general shall request the court that entered the commitment order to modify the order to provide for outpatient care.

(b) The request must explain in detail the reason for the request. The request must be accompanied by an affidavit of a physician who examined the person during the preceding seven days.

(c) The person shall be given notice of the request.

(d) On the request of the person or any other interested individual, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the person at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 81.169. The person shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting affidavit.

(f) If the court modifies the order, the court shall designate the health authority to monitor the person's compliance.

(g) The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority and shall comply with Section 81.175(b).

(h) A modified order may not extend beyond the term of the original order.

§81.183. Motion for Modification of Order for Outpatient Treatment

(a) The court that entered an order directing a person to participate in outpatient health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, on the motion of a municipal, county, or district attorney at the request of the health authority, on the motion of the attorney general at the request of the department, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the person if a hearing is scheduled. The person shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 81.155 for notice before a hearing on an application for court orders for the management of a person with a communicable disease.

(c) The hearing shall be held before the court, without a jury, and as prescribed by this chapter. The person shall be represented by an attorney and receive proper notice.

§81.184. Order for Temporary Detention

(a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183. At the request of the department, the attorney general shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183.

(b) The application must state the applicant's opinion and detail the reason for the applicant's opinion that:

(1) the person meets the criteria described by this chapter; and

(2) detention in an inpatient health care facility is necessary to evaluate the appropriate setting for continued court-ordered care.

(c) The court shall decide from the information in the application. The court may issue an order for temporary detention if a modification hearing is set and the court finds that there is probable cause to believe that the opinions stated in the application are valid.

(d) The judge shall appoint an attorney to represent a person who does not have an attorney when the order for temporary detention is signed.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the person and the person's attorney a written notice that contains:

- (1) a statement that the person has been placed under a temporary detention order;
- (2) the grounds for the order; and
- (3) the time and place of the modification hearing.

§81.185. Apprehension and Release Under Order for Temporary Detention

- (a) The order for temporary detention shall direct a peace officer to take the person into custody and immediately transport the person to an appropriate inpatient health care facility. The person shall be transported to a facility considered suitable by the health authority if an appropriate inpatient health care facility is not available.
- (b) A person may be detained under a temporary detention order for not longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 81.165(b) for an extreme weather emergency.
- (c) A facility head shall immediately release a person held under an order for temporary detention if the facility head does not receive notice that a modification hearing was held within the time prescribed by Subsection (b) at which the patient's continued detention was authorized.
- (d) A person released from custody under Subsection (c) continues to be subject to the terms of the outpatient orders for the management of the person issued before the order for temporary detention, if the orders have not expired.

§81.186. Order of Modification of Order for Outpatient Services

- (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the person continues to meet the applicable criteria for court orders for the management of a person with a communicable disease and that:
 - (1) the person has not complied with the court's order; or
 - (2) the person's condition has deteriorated to the extent that outpatient services are no longer appropriate.
- (b) The court's decision to modify an order must be supported by an affidavit of medical evaluation prepared by the health authority or department.
- (c) A court may refuse to modify the order and may direct the person to continue to participate in outpatient health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for examination, observation, isolation, or treatment at an appropriate inpatient health care facility.

§81.187. Renewal of Order for Extended Management

(a) A municipal, county, or district attorney, as appropriate, at the request of the health authority, shall file an application to renew an order for extended management. At the request of the department, the attorney general shall file an application to renew an order for extended management.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the person to extended inpatient services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by an affidavit of medical evaluation dated and signed by the health authority or department according to an examination conducted within the preceding 30 days.

(d) The court shall appoint an attorney to represent the person when an application is filed.

(e) The person or the person's attorney may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for a court order for the extended management of a person with a communicable disease.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended management required by this chapter. The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) The court may admit into evidence the affidavit of medical evaluation if a hearing is not requested or set. The affidavit constitutes competent medical testimony and the court may make its findings solely from the affidavit and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient health services, may modify the order to provide for outpatient health services in accordance with this chapter.

§81.188. Motion for Rehearing

- (a) The court may set aside an order for the management of a person with a communicable disease and grant a motion for rehearing for good cause shown.
- (b) The court may stay the order and release the person from custody before the hearing if the court is satisfied that the person does not meet the criteria for protective custody under this chapter.
- (c) The court may require an appearance bond in an amount set by the court.

§81.189. Request for Reexamination

- (a) A person subject to an order for extended management, or any interested person on the person's behalf and with the person's consent, may file a request with a court for a reexamination and a hearing to determine if the person continues to meet the criteria for the court order.
- (b) The request must be filed in the county in which the person is receiving the services.
- (c) The court may, on good cause shown:
 - (1) require that the patient be reexamined;
 - (2) schedule a hearing on the request; and
 - (3) notify the health authority, department, and the head of the facility providing health services to the person.
- (d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended management is entered or after a similar request is filed.
- (e) The head of the facility shall arrange for the person to be reexamined after receiving the court's notice.
- (f) The head of the facility shall immediately discharge the person if the health authority or department determines that the person no longer meets the criteria for court-ordered extended health services.
- (g) If the health authority or department determines that the person continues to meet the criteria for a court order for extended management, the health authority or department shall file an affidavit of medical evaluation with the court within 10 days after the request for reexamination and hearing is filed.

§81.190. Hearing on Request for Reexamination

(a) A court that required a patient's reexamination under Section 81.189 may set a date and place for a hearing on the request if, not later than the 10th day after the request is filed:

(1) an affidavit of medical evaluation stating that the patient continues to meet the criteria for extended management has been filed; or

(2) an affidavit has not been filed and the person has not been discharged.

(b) When the hearing is set, the judge shall appoint an attorney to represent the person if the person does not already have an attorney. The judge shall also give notice of the hearing to the person, the person's attorney, the health authority or department, and the facility head.

(c) The judge shall appoint a physician who is not on the staff of the health care facility in which the person is receiving services to examine the person and file an affidavit with the court setting out the person's diagnosis and recommended treatment. The court shall ensure that the person may be examined by a physician of the person's choice and own expense if requested by the person.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for a court order for the management of a person with a communicable disease.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the person continues to meet the criteria for extended management.

(f) The judge shall order the head of the facility to discharge the person if the court fails to find from clear and convincing evidence that the person continues to meet the criteria.

§81.191. Appeal

(a) An appeal from an order for the management of a person with a communicable disease, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) The trial judge in whose court the cause is pending may:

(1) stay the order and release the person from custody before the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under this chapter; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and Supreme Court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

§81.192. Continuing Care Plan Before Discharge

The health authority or department, in consultation with the person, shall prepare a continuing care plan for a person who is scheduled to be discharged if the person requires continuing care.

§81.193. Pass From Inpatient Care

(a) The head of a facility may permit a person admitted to the facility under order for extended inpatient management of a person with a communicable disease to leave the facility under a pass.

(b) A pass authorizes the person to leave the facility for not more than 72 hours.

(c) The pass may be subject to specified conditions.

(d) A pass may not be authorized without the concurrence of the health authority or department.

§81.194. Return to Facility

(a) If a person is permitted to leave a facility under Section 81.193, the head of the facility may have the person taken into custody, detained, and returned to the facility by:

(1) signing a certificate authorizing the person's return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the person's return.

(b) The health authority or department may also have a person returned by signing the certificate authorized by Subsection (a)(1).

(c) A magistrate may issue an order directing a peace officer to take a person into custody and return the person to the facility if the head of the facility, health authority, or department files the certificate as prescribed by this section.

(d) The head of the facility, health authority, or department may sign or file the certificate on a reasonable belief that:

- (1) the person is absent without authority from the facility;
- (2) the person has violated the conditions of a pass; or
- (3) the person's condition has deteriorated to the extent that the person's continued absence from the facility under a pass is inappropriate.

(e) A peace officer shall take the person into custody and return the person to the facility as soon as possible if the person's return is authorized by the certificate or the court order.

(f) The peace officer may take the person into custody without having the certificate or court order in the officer's possession.

§81.195. Discharge on Expiration of Court Order

The head of a facility to which a person was committed or from which a person was required to receive temporary or extended inpatient or outpatient health services shall discharge the person when the court order expires.

§81.196. Discharge Before Expiration of Court Order

(a) The health authority or department may direct the head of a facility to which a person was committed for inpatient health services or that provides outpatient health services to discharge the person at any time before the court order expires if the health authority or department determines that the person no longer meets the criteria for court-ordered health services.

(b) The health authority or department shall consider before discharging the person whether the person should receive outpatient health services in accordance with:

- (1) a court order; or
- (2) a modified order under Section 81.182 that directs the person to participate in outpatient health services.

(c) A discharge under Subsection (a) terminates the court order.

§81.197. Certificate of Discharge

Before a person is discharged under Section 81.195 or 81.196, the health authority or department shall prepare a discharge certificate, file it with the court that entered the order, and notify the head of the facility.

§81.198. Authorization for Admission

The head of a health care facility may admit and detain a person under the procedures prescribed by this subchapter.

§81.199. Transfer to Federal Facility

The health authority or department may authorize the head of a health care facility to transfer a person to a federal agency if:

- (1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in the facility;
- (2) notice of the transfer is sent to the committing court; and
- (3) the committing court enters an order approving the transfer.

§81.200. Transfer of Records

The head of the transferring inpatient health care facility shall send the person's appropriate medical records, or a copy of the records, to the head of the health care facility to which the person is transferred.

§81.201. Writ of Habeas Corpus

This subchapter does not limit a person's right to obtain a writ of habeas corpus.

§81.202. Effect on Guardianship

This subchapter, or an action taken or a determination made under this subchapter, does not affect a guardianship established under law.

§81.203. Confidentiality of Records

Records of a health care facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by this chapter or other state law.

§81.204. Rights Subject to Limitation by Head of Facility

- (a) A person in an inpatient health care facility has the right to:
- (1) receive visitors;
 - (2) communicate with a person outside the facility; and
 - (3) communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to facility rules. The head of the facility may restrict a right to the extent the head of the facility determines that the restriction is necessary to the public health or the person's welfare but may not restrict the right to communicate with legal counsel if an attorney-client relationship has been established.

(c) A restriction imposed by the head of the facility for the public health or the person's welfare and the reasons for the restriction shall be made a part of the person's clinical record.

§81.205. Notification of Rights

A person receiving inpatient health services shall be informed of the rights provided by Section 81.206:

- (1) orally, in simple, non-technical terms;
- (2) in writing that, if possible, is in the person's primary language; and
- (3) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

§81.206. General Rights Relating to Treatment

A person receiving health services under this subchapter has the right to:

- (1) appropriate treatment for the person's illness in an appropriate setting consistent with the protection of the person and the community;
- (2) not receive unnecessary or excessive medication;
- (3) refuse to participate in a research program; and
- (4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

§81.207. Adequacy of Treatment

(a) The head of an inpatient health care facility shall provide adequate medical care and treatment to every patient in accordance with accepted standards of medical practice.

(b) The head of the facility is responsible for the detention of the patient and for providing suitable security to prevent the patient from transmitting the communicable disease.

§81.208. Periodic Examination

The head of a health care facility is responsible for the examination by a physician of each person admitted to the facility under this subchapter at least once every seven days and more frequently as necessary.

§81.209. Use of Physical Restraint

(a) A physical restraint may not be applied to a person unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

§81.210. Costs

(a) A county shall pay the costs for a hearing or proceeding under this subchapter if a health authority:

(1) initiates an application for a court order under Section 81.151; or

(2) has an application for court-ordered management transferred to it under Section 81.157.

(b) Costs under this section include:

(1) attorney's fees;

(2) physician examination fees;

(3) compensation for court-ordered personal services;

(4) security; and

(5) expenses of transportation to a designated facility.

(c) A county is entitled to reimbursement for costs actually paid by the county from:

(1) the person who is the subject of the application; or

(2) a person or estate liable for the person's support.

(d) The department shall pay the costs of returning a person absent without authorization unless the person is able to pay the costs.

§81.211 Filing and Status of Foreign Court Orders

(a) In the case of a person who is not a resident of this state and who may be admitted to a state chest hospital in accordance with Section 13.046, the attorney general, at the request of the department, shall file a copy of an order issued by a court of another state that authorizes the commitment of the person to a health care facility for inpatient care in the manner provided by Chapter 35, Civil Practice and Remedies Code, for enforcement of foreign judgments.

(b) The application must be filed with the district court in the county in which the state chest hospital to which the person will be admitted is located.

(c) A filed foreign court order that authorizes the commitment of a person to a health care facility for inpatient care may be enforced in the same manner as a court order of the court in which it is filed.

(d) A foreign court order that authorizes the commitment of a person to a health care facility for inpatient care is subject to the contractual agreement with the foreign state entered into under Section 13.046.

SUBCHAPTER H.

BLOODBORNE PATHOGEN EXPOSURE CONTROL PLAN

§81.301. Definitions

In this subchapter:

(1) “Bloodborne pathogens” means pathogenic microorganisms that are present in human blood and that can cause diseases in humans. The term includes hepatitis B virus, hepatitis C virus, and human immunodeficiency virus.

(2) “Engineered sharps injury protection” means:

(A) a physical attribute that is built into a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids and that effectively reduces the risk of an exposure incident by a mechanism such as barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or another effective mechanism; or

(B) a physical attribute built into any other type of needle device, into a non-needle sharp, or into a non-needle infusion safety securement device that effectively reduces the risk of an exposure incident.

(3) “Governmental unit” means:

(A) this state and any agency of the state, including a department, bureau, board, commission, or office;

(B) a political subdivision of this state, including any municipality, county, or special district; and

(C) any other institution of government, including an institution of higher education.

(4) “Needleless system” means a device that does not use a needle and that is used:

(A) to withdraw body fluids after initial venous or arterial access is established;

(B) to administer medication or fluids; or

(C) for any other procedure involving the potential for an exposure incident.

(5) “Sharp” means an object used or encountered in a health care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur.

(6) “Sharps injury” means any injury caused by a sharp, including a cut, abrasion, or needlestick.

§81.302. Applicability of Subchapter

This subchapter applies only to a governmental unit that employs employees who:

(1) provide services in a public or private facility providing health care-related services, including a home health care organization; or

(2) otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps.

§81.303. Exposure Control Plan

The department shall establish an exposure control plan designed to minimize exposure of employees described by Section 81.302 to bloodborne pathogens. In developing the plan, the department must consider:

(1) policies relating to occupational exposure to bloodborne pathogens;

- (2) training and educational requirements for employees;
- (3) measures to increase vaccinations of employees; and
- (4) increased use of personal protective equipment by employees.

§81.304. Minimum Standards

The board by rule shall adopt minimum standards to implement the exposure control plan and the other provisions of this subchapter. The rules shall be analogous to standards adopted by the federal Occupational Safety and Health Administration. Each governmental unit shall comply with the minimum standards adopted under this subchapter.

§81.305. Needleless Systems

(a) The board by rule shall recommend that governmental units implement needleless systems and sharps with engineered sharps injury protection for employees.

(b) The recommendation adopted under Subsection (a) does not apply to the use of a needleless system or sharps with engineered sharps injury protection in circumstances and in a year in which an evaluation committee has established that the use of needleless systems and sharps with engineered sharps injury protection will jeopardize patient or employee safety with regard to a specific medical procedure or will be unduly burdensome. A report of the committee's decision shall be submitted to the department annually.

(c) At least half of the members of an evaluation committee established by a governmental unit to implement Subsection (b) must be employees who are health care workers who have direct contact with patients or provide services on a regular basis.

Text of subsec. (d) effective until May 1, 2003

(d) The rules adopted under Subsection (a) may not prohibit the use of a prefilled syringe that is approved by the federal Food and Drug Administration. This subsection expires May 1, 2003.

§81.306. Sharps Injury Log

(a) The board by rule shall require that information concerning exposure incidents be recorded in a written or electronic sharps injury log to be maintained by a governmental unit. This information must be reported to the department and must include:

- (1) the date and time of the exposure incident;
- (2) the type and brand of sharp involved in the exposure incident; and

- (3) a description of the exposure incident, including:
- (A) the job classification or title of the exposed employee;
 - (B) the department or work area where the exposure incident occurred;
 - (C) the procedure that the exposed employee was performing at the time of the incident;
 - (D) how the incident occurred;
 - (E) the employee's body part that was involved in the exposure incident; and
 - (F) whether the sharp had engineered sharps injury protection and, if so, whether the protective mechanism was activated and whether the injury occurred before, during, or after the activation of the protective mechanism.

(b) Information regarding which recommendations under Section 81.305(a) were adopted by the governmental entity shall be included in the log.

(c) All information and materials obtained or compiled by the department in connection with a report under this section are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release by the department. The department shall make available, in aggregate form, the information described in Section 81.305(b) and this section, provided that the name and other information identifying the facility is deleted and the information is provided according to public health regions established by the department.

§81.307. Device Registration

(a) The department, in accordance with rules adopted by the board, shall implement a registration program for existing needleless systems and sharps with engineered sharps injury protection.

(b) The department shall compile and maintain a list of existing needleless systems and sharps with engineered sharps injury protection that are available in the commercial marketplace and registered with the department to assist governmental units to comply with this subchapter.

(c) The department shall charge a fee to register a device in an amount established by the board. The fees collected under this section may be appropriated only to the department to implement this subchapter.

SUBCHAPTER I.
ANIMAL-BORNE DISEASES

§81.351. Definition

In this subchapter, “pet store” means a retail store that sells animals as pets.

§81.352. Warning Sign Required; Rules

(a) The owner or operator of a pet store that sells reptiles shall:

(1) post a sign warning of reptile-associated salmonellosis in accordance with department rules; and

(2) ensure that a written warning related to reptile-associated salmonellosis is provided to each purchaser of a reptile.

(b) The department shall adopt rules to govern:

(1) the form and content of the sign required by Subsection (a) and the manner and place of posting of the sign; and

(2) the form and content of the written warning required by Subsection (a).

§81.353. Administrative Penalty

(a) The department may assess an administrative penalty if a person violates this section or a rule adopted under this section.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person’s previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person’s demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed \$500 for each month a violation continues.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the board to contest the affidavit as provided by those rules.

(e) The attorney general may sue to collect the penalty.

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

PERTINENT PROVISIONS OF
CHAPTER 121. LOCAL PUBLIC HEALTH REORGANIZATION ACT
SUBCHAPTER A.
GENERAL PROVISIONS

§121.001. Short Title

This chapter may be cited as the Local Public Health Reorganization Act.

§121.002. Definitions

In this chapter:

- (1) “Essential public health services” means services to:
- (A) monitor the health status of individuals in the community to identify community health problems;
 - (B) diagnose and investigate community health problems and community health hazards;
 - (C) inform, educate, and empower the community with respect to health issues;
 - (D) mobilize community partnerships in identifying and solving community health problems;
 - (E) develop policies and plans that support individual and community efforts to improve health;
 - (F) enforce laws and rules that protect the public health and ensure safety in accordance with those laws and rules;
 - (G) link individuals who have a need for community and personal health services to appropriate community and private providers;
 - (H) ensure a competent workforce for the provision of essential public health services;
 - (I) research new insights and innovative solutions to community health problems; and
 - (J) evaluate the effectiveness, accessibility, and quality of personal and population-based health services in a community.
- (2) “Physician” means a person licensed to practice medicine by the Texas State Board of Medical Examiners.

§121.003. Powers of Municipalities and Counties

(a) The governing body of a municipality or the commissioners court of a county may enforce any law that is reasonably necessary to protect the public health.

(b) The governing bodies of municipalities and the commissioners courts of counties may cooperate with one another in making necessary improvements and providing services to promote the public health in accordance with The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

(c) The commissioners court of a county may grant authority under this subsection to a county employee who is trained by a health authority appointed by the county under Section 121.021, by a local health department established under Section 121.031, or by a public health district established under Section 121.041 and who is not a peace officer. The court may grant to the employee the power to issue a citation in an unincorporated area of the county to enforce any law or order of the commissioners court that is reasonably necessary to protect the public health. A citation issued under this subsection must state the name of the person cited, the violation charged, and the time and place the person is required to appear in court. If a person who receives a citation under this subsection fails to appear on the return date of the citation, the court may issue a warrant for the person's arrest for the violation described in the citation.

§121.004. Local Health Units

A local health unit is a division of municipal or county government that provides public health services but does not provide each service required of a local health department under Section 121.032(a) or of a public health district under Section 121.043(a).

§121.005. State and Local Affiliation; Contracts

(a) A local health unit, local health department, or public health district may become affiliated with the department to facilitate the exchange of information and the coordination of public health services.

(b) To be affiliated with the department, a local health unit, local health department, or public health district must annually provide to the department information relating to:

- (1) services provided;
- (2) staffing patterns; and

(3) funding sources and budget.

(c) The department may contract with a local health unit, local health department, or public health district for the provision of public health services.

(d) The board may adopt rules necessary to implement this section.

§121.006. Public Health Services Fees; State Support

(a) The governing body of a municipality, the commissioners court of a county, or the administrative board of a public health district may adopt ordinances or rules to charge fees for public health services.

(b) A municipality, county, or public health district may not deny public health services to an individual because of inability to pay for the services. A municipality, county, or public health district shall provide for the reduction or waiver of a fee for an individual who cannot pay for services in whole or in part.

(c) The Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and standards adopted under that Act control, if applicable, if the local health unit, local health department, or public health district receives state support for the provision of public health services.

(d) In this section, "public health services" means:

(1) personal health promotion and maintenance services;

(2) infectious disease control and prevention services;

(3) environmental and consumer health programs;

(4) public health education and information services;

(5) laboratory services; and

(6) administrative services.

§121.0065. Grants for Essential Public Health Services

(a) Subject to the availability of funds, the department shall administer a program under which appropriated money may be granted to counties, municipalities, public health districts, and other political subdivisions for use by the counties, municipalities, public health districts, and other political subdivisions to provide or pay for essential public health services.

(b) The grants authorized by Subsection (a) shall be distributed equally between urban and rural areas of the state.

(c) The board shall adopt rules governing:

- (1) the allocation formula for grants awarded under this section;
- (2) the manner in which a municipality, county, public health district, or other political subdivision applies for a grant;
- (3) the procedures for awarding grants; and
- (4) the minimum essential public health services to be provided under the grant and other standards applicable to the services to be provided under the grant.

(d) A municipality, county, public health district, or other political subdivision that receives a grant under this section, in consultation with the department, shall develop a plan to evaluate the effectiveness, accessibility, and quality of the essential public health services that are provided under the grant. The plan must:

- (1) identify the outcomes that are intended to result from the use of the grant money and establish a mechanism to measure those outcomes; and
- (2) establish performance standards for the delivery of essential public health services and a mechanism to measure compliance with those standards.

(e) The governing body of the municipality, the commissioners court of the county, or the members of a public health district may appoint a local health board to monitor the use of the money received under this section.

(f) A public health board established under Section 121.034 or 121.046 may serve as the local health board authorized under Subsection (e).

(g) The governing body of the municipality or the commissioners court of a county may serve as the local health board authorized under Subsection (e). If the governing body of the municipality or the commissioners court of the county elects to serve as the local health board, the governing body or commissioners court may appoint an advisory committee to advise the governing body or commissioners court with respect to the use of the money granted under this section.

(h) Chapter 783, Government Code, and standards adopted under that chapter control if applicable to a grant made under this section.

§121.0066. Essential Public Health Services Provided by Department

(a) Subject to the availability of funds, the department may provide essential public health services for a population for which a municipality, county, public health district, or other political subdivision is not receiving a grant to provide those services under Section 121.0065.

(b) Subject to the availability of funds, the department shall develop a plan that complies with Section 121.0065(d) to evaluate the effectiveness, accessibility, and quality of essential public health services provided under this section.

§121.0067. Evaluation and Report of Delivery of Essential Public Health Services

(a) The department, in cooperation with municipalities, counties, public health districts, and other political subdivisions that receive grants under Section 121.0065, and the consortium established under Subchapter F, shall evaluate:

(1) the effectiveness, accessibility, and quality of essential public health services provided under the grant program established by Section 121.0065 and under Section 121.0066; and

(2) the adequacy of funding for those services.

(b) Not later than January 1 of each odd-numbered year, the department shall file with the Governor and the presiding officer of each house of the legislature a report detailing the results of the evaluation conducted under Subsection (a). The report must include recommendations relating to:

(1) legislation to improve the effectiveness, accessibility, and quality of essential public health services; and

(2) appropriate funding for those services.

§121.007. Public Health Regions

(a) The board may designate geographic areas of the state as public health regions to provide public health services.

(b) The board shall appoint a physician to serve as regional director for each public health region. The regional director is the chief administrative officer of the region. The board shall establish the qualifications and terms of employment of a regional director.

(c) The board or its designee may require a regional director to perform the duties of a health authority. The regional director may perform those duties, as authorized by the board or commissioner, in a jurisdiction in the region in which the health authority fails to perform duties prescribed by the board under Section 121.024. The regional director shall perform the duties of a health authority in a jurisdiction in the region in which there is not a health authority.

§121.008. Annual Conference

(a) The board shall hold an annual conference for health authorities and for directors of local health departments and public health districts. The commissioner or the commissioner's designee shall preside over the conference.

(b) A county or municipality may pay necessary expenses incurred by its health authority or director in attending the conference.

SUBCHAPTER B.

HEALTH AUTHORITIES

§121.021. Health Authority

A health authority is a physician appointed under the provisions of this chapter to administer state and local laws relating to public health within the appointing body's jurisdiction.

§121.022. Qualifications

(a) A health authority must be:

(1) a competent physician with a reputable professional standing who is legally qualified to practice medicine in this state; and

(2) a resident of this state.

(b) To be qualified to serve as a health authority, the appointee must:

(1) take and subscribe to the official oath; and

(2) file a copy of the oath and appointment with the board.

§121.023. Term of Office

A health authority serves for a term of two years and may be appointed to successive terms.

§121.024. Duties

- (a) A health authority is a state officer when performing duties prescribed by state law.
- (b) A health authority shall perform each duty that is:
- (1) necessary to implement and enforce a law to protect the public health; or
 - (2) prescribed by the board.
- (c) The duties of a health authority include:
- (1) establishing, maintaining, and enforcing quarantine in the health authority's jurisdiction;
 - (2) aiding the board in relation to local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation in the health authority's jurisdiction;
 - (3) reporting the presence of contagious, infectious, and dangerous epidemic diseases in the health authority's jurisdiction to the board in the manner and at the times prescribed by the board;
 - (4) reporting to the board on any subject on which it is proper for the board to direct that a report be made; and
 - (5) aiding the board in the enforcement of the following in the health authority's jurisdiction:
 - (A) proper rules, requirements, and ordinances;
 - (B) sanitation laws;
 - (C) quarantine rules; and
 - (D) vital statistics collections.

§121.025. Removal From Office

A health authority may be removed from office for cause under the personnel procedures applicable to the heads of departments of the local government that the health authority serves.

SUBCHAPTER C.

MUNICIPALITIES AND COUNTIES WITHOUT ORGANIZED LOCAL PUBLIC HEALTH DEPARTMENTS OR DISTRICTS

§121.028. Appointment of Health Authority

- (a) The governing body of a municipality or the commissioners court of a county that has not established a local health department or a public health district may appoint a physician as health authority to administer state and local laws relating to public health in the municipality's or county's jurisdiction.
- (b) The governing body of a municipality or the commissioners court of a county described by Subsection (a) that is receiving a grant under Section 121.0065 shall appoint a physician as health authority.
- (c) An individual appointed to serve as health authority for a county or municipality may serve as the health authority for one or more other jurisdictions under an interlocal contract made in accordance with Chapter 791, Government Code.

§121.029. Delegation of Authority

- (a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the board, or by this or any other law, to a properly qualified physician to act while the health authority is absent or incapacitated.
- (b) The physician designated by the health authority must:
- (1) meet the qualifications set out in Section 121.022(a);
 - (2) be appointed as a designee in the same manner as the appointment of the health authority;
 - (3) take, subscribe, and file the official oath and appointment with the board as required by Section 121.022(b); and
 - (4) file a certified copy of the written delegation with the board.
- (c) The delegation is effective during the term of the health authority who made the delegation; however, the health authority may limit the time to a shorter duration in the written delegation of authority.
- (d) The health authority is responsible for the acts of the physician to whom the health authority has delegated the power or duty.
- (e) The entity that appoints the health authority and the designee health authority must adopt procedures for the service of the designee as health authority under this section. The procedures shall prevent duplication of authority between the health authority and the designee and provide notice to the department when authority is transferred.

SUBCHAPTER D.

LOCAL HEALTH DEPARTMENTS

§121.033. Department Director

- (a) The governing body of a municipality or the commissioners court of a county shall appoint the director of the municipality's or county's local health department.
- (b) The director is the chief administrative officer of the local health department, and if the director is a physician, the director is the health authority in the local health department's jurisdiction.
- (c) The governing body of a municipality or the commissioners court of a county may designate a person to perform its appointment duties under this section.
- (d) A director of a local health department who is not a physician shall appoint a physician as the health authority in the local health department's jurisdiction, subject to the approval of the governing body or the commissioners court, as appropriate, and the board.
- (e) The governing body or the commissioners court, as appropriate, shall set the compensation of the director and the health authority in its jurisdiction, except that the compensation, including a salary, may be allowed only for services actually rendered.

SUBCHAPTER E.

PUBLIC HEALTH DISTRICTS

§121.045. District Director

- (a) The members of a public health district shall appoint the director of the district.
- (b) The director is the chief administrative officer of the public health district, and if the director is a physician, the director is the health authority in the district's jurisdiction.
- (c) A member may designate a person to perform its appointment duties under this section.
- (d) A director of a public health district who is not a physician shall appoint a physician as the health authority for the district, subject to the approval of the members and the board.

**PERTINENT PROVISIONS OF
CHAPTER 161. PUBLIC HEALTH PROVISIONS**

SUBCHAPTER C.

**PROVISION OF INFORMATION RELATING TO CERTAIN
HEALTH CONDITIONS**

§161.011 Permission Required

A person, including an officer or agent of this state or of an instrumentality or political subdivision of this state, may not enter a private residence to conduct a health inspection without first receiving:

- (1) permission obtained from a lawful adult occupant of the residence; or
- (2) an authorization to inspect the residence for a specific public health purpose by a magistrate or by an order of a court of competent jurisdiction on a showing of a probable violation of a state health law, a control measure under Chapter 81, or a health ordinance of a political subdivision.

§161.0211. Epidemiologic or Toxicologic Investigations

(a) Under its duty to protect the public health, the department shall conduct epidemiologic or toxicologic investigations of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health.

(b) The department may conduct those investigations to determine the nature and extent of the disease or environmental exposure believed to be harmful to the public health. Any findings or determinations from such investigations that relate to environmental exposures believed to be harmful to the public shall be reported in writing to the Texas Commission on Environmental Quality and the two agencies shall coordinate corrective measures as appropriate. The department shall use generally accepted methods of epidemiology or toxicology in the conduct of an investigation.

(c) A person shall provide medical, demographic, epidemiologic, toxicologic, or environmental information to the department as described by Section 81.061(c).

(d) A person is not liable for damages or other relief for providing medical or other confidential information to the department during an epidemiologic or toxicologic investigation.

§161.0212. Right of Entry

To conduct an epidemiologic or toxicologic investigation, the commissioner or the commissioner's designee has the same authority to investigate, sample, inspect, and enter as that described by Sections 81.061, 81.063, 81.064, and 81.065.

**PERTINENT PROVISIONS OF
CHAPTER 241. HOSPITALS
SUBCHAPTER B.
HOSPITAL LICENSES**

§241.026. Rules and Minimum Standards

(a) The board shall adopt and enforce rules to further the purposes of this chapter. The rules at a minimum shall address:

- (1) minimum requirements for staffing by physicians and nurses;
- (2) hospital services relating to patient care;
- (3) fire prevention, safety, and sanitation requirements in hospitals;
- (4) patient care and a patient bill of rights;
- (5) compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; and
- (6) compliance with nursing peer review under Subchapter I, Chapter 301, and Chapter 303 Occupations Code, and the rules of the Board of Nurse Examiners relating to peer review.

(b) In adopting rules, the board shall consider the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) and the standards of the Joint Commission on Accreditation of Healthcare Organizations and will attempt to achieve consistency with those conditions and standards.

(c) Upon the recommendation of the hospital licensing director and the council, the board by order may waive or modify the requirement of a particular provision of this Act or minimum standard adopted by board rule under this section to a particular general or special hospital if the board determines that the waiver or modification will facilitate the creation or operation of the hospital and that the waiver or modification is in the best interests of the individuals served or to be served by the hospital.

(d) The board shall adopt rules establishing procedures and criteria for the issuance of the waiver or modification order. The criteria must include at a minimum a statement of the appropriateness of the waiver or modification against the best interests of the individuals served by the hospital.

(e) If the board orders a waiver or modification of a provision or standard, the licensing record of the hospital granted the waiver or modification shall contain documentation to support the board's action. The board's rules shall specify the type and specificity of the supporting documentation that must be included.

(f) A comprehensive medical rehabilitation hospital or a pediatric and adolescent hospital shall have an emergency treatment room but is not required to have an emergency department.

SUBCHAPTER G.

DISCLOSURE OF HEALTH CARE INFORMATION

§241.153. Disclosure Without Written Authorization

A patient's health care information may be disclosed without the patient's authorization if the disclosure is:

- (1) directory information, unless the patient has instructed the hospital not to make the disclosure or the directory information is otherwise protected by state or federal law;
- (2) to a health care provider who is rendering health care to the patient when the request for the disclosure is made;
- (3) to a transporting emergency medical services provider for the sole purpose of determining the patient's diagnosis and the outcome of the patient's hospital admission;
- (4) to a member of the clergy specifically designated by the patient;
- (5) to a qualified organ or tissue procurement organization as defined in Section 692.002 for the purpose of making inquiries relating to donations according to the protocol referred to in Section 692.013(d);
- (6) to a prospective health care provider for the purpose of securing the services of that health care provider as part of the patient's continuum of care, as determined by the patient's attending physician;
- (7) to a person authorized to consent to medical treatment under Chapter 313 or to a person in a circumstance exempted from Chapter 313 to facilitate the adequate provision of treatment;

(8) to an employee or agent of the hospital who requires health care information for health care education, quality assurance, or peer review or for assisting the hospital in the delivery of health care or in complying with statutory, licensing, accreditation, or certification requirements and if the hospital takes appropriate action to ensure that the employee or agent:

(A) will not use or disclose the health care information for any other purpose; and

(B) will take appropriate steps to protect the health care information;

(9) to a federal, state, or local government agency or authority to the extent authorized or required by law;

(10) to a hospital that is the successor in interest to the hospital maintaining the health care information;

(11) to the American Red Cross for the specific purpose of fulfilling the duties specified under its charter granted as an instrumentality of the United States government;

(12) to a regional poison control center, as the term is used in Chapter 777, to the extent necessary to enable the center to provide information and education to health professionals involved in the management of poison and overdose victims, including information regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions;

(13) to a health care utilization review agent who requires the health care information for utilization review of health care under Article 21.58A, Insurance Code;

(14) for use in a research project authorized by an institutional review board under federal law;

(15) to health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient;

(16) to facilitate reimbursement to a hospital, other health care provider, or the patient for medical services or supplies;

(17) to a health maintenance organization for purposes of maintaining a statistical reporting system as required by a rule adopted by a state agency or regulations adopted under the federal Health Maintenance Organization Act of 1973, as amended (42 U.S.C. Section 300 et seq.);

(18) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 4.01(e), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes);

(19) to comply with a court order except as provided by Subdivision (20);
or

(20) related to a judicial proceeding in which the patient is a party and the disclosure is requested under a subpoena issued under:

(A) the Texas Rules of Civil Procedure or Code of Criminal Procedure; or

(B) Chapter 121, Civil Practice and Remedies Code.

**PERTINENT PROVISIONS OF
HEALTH AND SAFETY CODE**

**CHAPTER 508. AREA QUARANTINE FOR ENVIRONMENTAL
OR TOXIC AGENT**

§508.001. Definitions

In this chapter:

(1) “Environmental or toxic agent” means any bacterium or other disease-producing organism, toxic substance, radioactive substance, or other hazardous substance capable of causing widespread human illness, death, or substantial negative economic impact.

(2) “Health authority” means a physician appointed as a health authority or a regional director under Chapter 121.

§508.002. Applicability

This chapter applies to any circumstance in which an environmental or toxic agent is introduced into the environment, including an act of terrorism.

§508.003. Area Quarantine

(a) If the commissioner of public health or one or more health authorities determine that the introduction of an environmental or toxic agent into the environment has occurred, the commissioner or authorities may impose an area quarantine in the manner and subject to the procedures provided for an area quarantine imposed under Section 81.085. The commissioner of public health or a health authority may, with respect to an area quarantine imposed under this chapter, exercise any power for a response to the introduction of an environmental or toxic agent into the environment under this section that is authorized by Section 81.085 for a response to an outbreak of a communicable disease. The area quarantine must be accomplished by the least restrictive means necessary to protect public health considering the availability of resources.

(b) A quarantine imposed by a health authority under this section expires at the earlier of:

(1) the 24th hour after the time the quarantine is imposed; or

(2) the time that appropriate action to terminate the quarantine or impose superseding requirements is taken under Chapter 418, Government Code, or is taken by the commissioner of public health under this section.

§508.004. Criminal Penalty

A person commits an offense if the person knowingly fails or refuses to obey an order or instruction of the commissioner of public health or a health authority issued under this chapter and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree.

**PERTINENT PROVISIONS OF
GOVERNMENT CODE**

CHAPTER 418. EMERGENCY MANAGEMENT

SUBCHAPTER A.

GENERAL PROVISIONS

§418.001. Short Title

This chapter may be cited as the Texas Disaster Act of 1975.

§418.004. Definitions

In this chapter:

- (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 fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, terrorist activity, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency.
- (2) "Division" means the division of emergency management in the office of the Governor.
- (3) "Energy emergency" means a temporary statewide, regional, or local shortage of petroleum, natural gas, or liquid fuel energy supplies that makes emergency measures necessary to reduce demand or allocate supply.
- (4) "Interjurisdictional agency" means a disaster agency maintained by and serving more than one political subdivision.
- (5) "Organized volunteer group" means an organization such as the American National Red Cross, the Salvation Army, the Civil Air Patrol, the Radio Amateur Civil Emergency Services, a volunteer fire department, a volunteer rescue squad, or other similar organization recognized by federal or state statute, regulation, or memorandum.
- (6) "Political subdivision" means a county or incorporated city.

(7) “Temporary housing” has the meaning assigned by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93–288, as amended.

(8) “Joint board” means a board created under Section 22.074, Transportation Code, whose constituent agencies are populous home-rule municipalities as defined by Section 22.071, Transportation Code.

SUBCHAPTER B.

POWERS AND DUTIES OF THE GOVERNOR

§418.014. Declaration of State of Disaster

(a) The Governor by executive order or proclamation may declare a state of disaster if the Governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent.

(b) Except as provided by Subsection (c), the state of disaster continues until the Governor:

(1) finds that:

(A) the threat or danger has passed; or

(B) the disaster has been dealt with to the extent that emergency conditions no longer exist; and

(2) terminates the state of disaster by executive order.

(c) A state of disaster may not continue for more than 30 days unless renewed by the Governor. The legislature by law may terminate a state of disaster at any time. On termination by the legislature, the Governor shall issue an executive order ending the state of disaster.

(d) An executive order or proclamation issued under this section must include:

(1) a description of the nature of the disaster;

(2) a designation of the area threatened; and

(3) a description of the conditions that have brought the state of disaster about or made possible the termination of the state of disaster.

(e) An executive order or proclamation shall be disseminated promptly by means intended to bring its contents to the attention of the general public. An order or proclamation shall be filed promptly with the division of emergency management, the secretary of state, and the county clerk or city secretary in each area to which it applies unless the circumstances attendant on the disaster prevent or impede the filing.

§418.015. Effect of Disaster Declaration

- (a) An executive order or proclamation declaring a state of disaster:
- (1) activates the disaster recovery and rehabilitation aspects of the state emergency management plan applicable to the area subject to the declaration; and
 - (2) authorizes the deployment and use of any forces to which the plan applies and the use or distribution of any supplies, equipment, and materials or facilities assembled, stockpiled, or arranged to be made available under this chapter or other law relating to disasters.
- (b) The preparedness and response aspects of the state emergency management plan are activated as provided by that plan.
- (c) During a state of disaster and the following recovery period, the Governor is the commander in chief of state agencies, boards, and commissions having emergency responsibilities. To the greatest extent possible, the Governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or plans, but this chapter does not restrict the Governor's authority to do so by orders issued at the time of the disaster.

§418.016. Suspension of Procedural Laws and Rules

The Governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

§418.017. Use of Public and Private Resources

- (a) The Governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster.
- (b) The Governor may temporarily reassign resources, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services.
- (c) The Governor may commandeer or use any private property if the Governor finds it necessary to cope with a disaster, subject to the compensation requirements of this chapter.

§418.018. Movement of People

- (a) The Governor may recommend the evacuation of all or part of the population from a stricken or threatened area in the state if the Governor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery.
- (b) The Governor may prescribe routes, modes of transportation, and destinations in connection with an evacuation.
- (c) The Governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area.

SUBCHAPTER H.**MISCELLANEOUS PROVISIONS****§418.171. Qualifications for Rendering Aid**

A person who holds a license, certificate, or other permit issued by a state or political subdivision of any state evidencing the meeting of qualifications for professional, mechanical, or other skills may render aid involving the skill in this state to meet an emergency or disaster. This state shall give due consideration to the license, certificate, or other permit.

§418.176. Confidentiality of Certain Information Relating to Emergency Response Providers

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

(b) In this section and Sections 418.177–418.183, “governmental entity” includes the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code.

§418.177. Confidentiality of Certain Information Relating to Risk or Vulnerability Assessment

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

§418.178. Confidentiality of Certain Information Relating to Construction or Assembly of Weapons

(a) In this section, “explosive weapon” has the meaning assigned by Section 46.01, Penal Code.

(b) Information is confidential if it is information collected, assembled, or maintained by or for a governmental entity and:

(1) is more than likely to assist in the construction or assembly of an explosive weapon or a chemical, biological, radiological, or nuclear weapon of mass destruction; or

(2) indicates the specific location of:

(A) a chemical, biological agent, toxin, or radioactive material that is more than likely to be used in the construction or assembly of such a weapon; or

(B) unpublished information relating to a potential vaccine or to a device that detects biological agents or toxins.

§418.179. Confidentiality of Certain Encryption Codes and Security Keys for Communications System

(a) Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to the details of the encryption codes or security keys for a public communications system.

(b) This section does not prohibit a governmental entity from making available, at cost, to bona fide local news media, for the purpose of monitoring emergency communications of public interest, the communications terminals used in the entity’s trunked communications system that have encryption codes installed.

§418.180. Confidentiality of Certain Information Prepared for United States

Information, other than financial information, in the possession of a governmental entity is confidential if the information:

- (1) is part of a report to an agency of the United States;
- (2) relates to an act of terrorism or related criminal activity; and
- (3) is specifically required to be kept confidential:
 - (A) under Section 552.101 because of a federal statute or regulation;
 - (B) to participate in a state-federal information sharing agreement; or
 - (C) to obtain federal funding.

§418.181. Confidentiality of Certain Information Relating to Critical Infrastructure

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

§418.182. Confidentiality of Certain Information Relating to Security Systems

- (a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.
- (b) Financial information in the possession of a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.
- (c) Information in the possession of a governmental entity that relates to the location of a security camera in a private office at a state agency, including an institution of higher education, as defined by Section 61.003, Education Code, is public information and is not excepted from required disclosure under Chapter 552 unless the security camera:
 - (1) is located in an individual personal residence for which the state provides security; or
 - (2) is in use for surveillance in an active criminal investigation.

§418.183. Disclosure of Certain Confidential Information

(a) This section applies only to information that is confidential under Sections 418.175–418.182.

(b) At any time during a state of disaster, the executive or administrative head of the governmental entity may voluntarily disclose or otherwise make available all or part of the confidential information to another person or another entity if the executive or administrative head believes that the other person or entity has a legitimate need for the information.

(c) The executive or administrative head of a port, port authority, or navigation district created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, may voluntarily disclose or otherwise make available all or part of the confidential information to another person if the information:

(1) is shared in connection with a security network or committee, including a federal or state security committee or task force;

(2) consists of data, video, or other information on an information-sharing device that is shared with a security network; or

(3) is shared with an emergency operations center.

(d) The disclosure or making available of confidential information by a hospital district to a national accreditation body does not waive or affect the confidentiality of the information.

(e) The disclosure or making available of confidential information under Subsection (b) or (c) does not waive or affect the confidentiality of the information.

(f) A governmental body subject to Chapter 551 is not required to conduct an open meeting to deliberate information to which this section applies. Notwithstanding Section 551.103(a), the governmental body must make a tape recording of the proceedings of a closed meeting to deliberate the information.

GOVERNMENT CODE
CHAPTER 421. HOMELAND SECURITY
SUBCHAPTER A.
GENERAL PROVISIONS

§421.001. Definitions

In this chapter:

- (1) “Agency” means any governmental entity.
- (2) “Critical infrastructure” includes all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation.
- (3) “Homeland security activity” means any activity related to the prevention or discovery of, response to, or recovery from a terrorist attack, natural or man-made disaster, hostile military or paramilitary action, or extraordinary law enforcement emergency.

§421.002. Homeland Security Strategy

(a) The governor shall direct homeland security in this state and shall develop a statewide homeland security strategy that improves the state’s ability to:

- (1) detect and deter threats to homeland security;
- (2) respond to homeland security emergencies; and
- (3) recover from homeland security emergencies.

(b) The governor’s homeland security strategy shall coordinate homeland security activities among and between local, state, and federal agencies and the private sector and must include specific plans for:

- (1) intelligence gathering and analysis;
- (2) information sharing;
- (3) reducing the state’s vulnerability to homeland security emergencies;
- (4) protecting critical infrastructure;
- (5) protecting the state’s international border, ports, and airports;
- (6) detecting, deterring, and defending against terrorism, including cyber-terrorism and biological, chemical, and nuclear terrorism;

- (7) positioning equipment, technology, and personnel to improve the state's ability to respond to a homeland security emergency;
- (8) directing the Texas Infrastructure Protection Communications Center and giving the center certain forms of authority to implement the governor's homeland security strategy; and
- (9) using technological resources to:
 - (A) facilitate the interoperability of government technological resources, including data, networks, and applications;
 - (B) coordinate the warning and alert systems of state and local agencies;
 - (C) incorporate multidisciplinary approaches to homeland security; and
 - (D) improve the security of governmental and private sector information technology and information resources.
- (c) The governor's homeland security strategy must complement and operate in coordination with the federal homeland security strategy.

§421.003. Criminal Intelligence Information

The Department of Public Safety of the State of Texas is:

- (1) the repository in this state for the collection of multijurisdictional criminal intelligence information that is about terrorist activities or otherwise related to homeland security activities; and
- (2) the state agency that has primary responsibility to analyze and disseminate that information.

§421.004. Provisions Governing Mobile Tracking Devices

In the event of a conflict between Section 14, Article 18.21, Code of Criminal Procedure, and this chapter or a rule adopted under this chapter, Section 14, Article 18.21, Code of Criminal Procedure, controls.

[Sections 421.005–421.020 reserved for expansion]

SUBCHAPTER B.

CRITICAL INFRASTRUCTURE PROTECTION COUNCIL

§421.021. Membership

(a) The Critical Infrastructure Protection Council is composed of the governor or the governor's designee and one representative of each of the following entities, appointed by the single statewide elected or appointed governing officer or administrative head of the entity:

- (1) Department of Agriculture;
- (2) office of the attorney general;
- (3) General Land Office;
- (4) Public Utility Commission of Texas;
- (5) Department of State Health Services;
- (6) Department of Information Resources;
- (7) Department of Public Safety of the State of Texas;
- (8) division of emergency management of the office of the governor;
- (9) Texas National Guard;
- (10) Texas Commission on Environmental Quality;
- (11) Railroad Commission of Texas;
- (12) Texas Strategic Military Planning Commission; and
- (13) Texas Department of Transportation.

(b) To be eligible for appointment as a member of the council, a person must be directly involved in the policies, programs, or funding activities of the appointing agency, office, or division that are relevant to homeland security or infrastructure protection.

(c) A member of the council serves at the will of the governor. At the request of the governor, an appointing authority under this section shall appoint a different member.

(d) An officer or employee of a state or local agency who serves as a member of the council or a special advisory committee under this subchapter shall perform the duties required by the council or special advisory committee as an additional duty of the member's office or employment.

§421.022. Reimbursement of Expenses

A member of the council may not receive additional compensation for service on the council but is entitled to reimbursement of reasonable expenses incurred in direct performance of official duties, including travel expenses incurred by the member while conducting the business of the council, subject to any applicable limitation on reimbursement provided by general law or the General Appropriations Act.

§421.023. Administration

(a) The council is an advisory entity administered by the office of the governor.

(b) The governor may adopt rules as necessary for the operation of the council.

(c) The governor shall designate the presiding officer of the council.

(d) The council shall meet at the call of the governor and shall meet at least once each quarter in a calendar year.

(e) The council is not subject to Chapter 2110.

§421.024. Duties

The council shall advise the governor on:

(1) the development and coordination of a statewide critical infrastructure protection strategy;

(2) the implementation of the governor's homeland security strategy by state and local agencies and provide specific suggestions for helping those agencies implement the strategy; and

(3) other matters related to the planning, development, coordination, and implementation of initiatives to promote the governor's homeland security strategy.

§421.025. Special Advisory Committees

(a) The governor may appoint one or more special advisory committees composed of representatives from state or local agencies or nongovernmental entities not represented on the council.

(b) The governor shall determine the number of members and qualifications for membership on a special advisory committee under this section.

(c) A special advisory committee under this section shall assist the council in performing its duties.

(d) A special advisory committee under this section is subject to Chapter 2110, except that Section 2110.002 does not apply.

§421.026. Report

The council shall annually submit to the governor a report stating:

- (1) the council's progress in developing and coordinating a statewide critical infrastructure protection strategy;
- (2) the status and funding of state programs designed to detect and deter homeland security emergencies, including the status and funding of counter-terrorism efforts;
- (3) recommendations on actions to reduce threats to homeland security, including threats related to terrorism; and
- (4) recommendations for improving the alert, response, and recovery capabilities of state and local agencies.

[Sections 421.027–421.060 reserved for expansion]

SUBCHAPTER C.

CIVIL LIABILITY FOR ACTS OR OMISSIONS

§421.061. Civil Liability

(a) An officer or employee of a state or local agency performing a homeland security activity or a volunteer performing a homeland security activity at the request or under the direction of an officer or employee of a state or local agency is considered for purposes of Section 431.085 to be

a member of the state military forces ordered into active service of the state by proper authority and is considered to be discharging a duty in that capacity if:

- (1) the officer, employee, or volunteer is performing the homeland security activity under procedures prescribed or circumstances described for the purpose of this section in the governor's homeland security strategy;
- (2) in the case of a volunteer, the volunteer is acting within the course and scope of the request or direction of the officer or employee of the state or local agency; and

(3) in the case of an officer or employee of a state or local agency, the officer or employee is acting within the course and scope of the person's authority.

(b) A person described by Subsection (a) is not immune from civil liability under Section 431.085 for damages resulting from the performance of a homeland security activity if, under the circumstances, the person's performance of the homeland security activity was willfully or wantonly negligent or done with conscious indifference or reckless disregard for the safety of persons this chapter is intended to protect.

(c) This section does not make a person a member of the state military forces for any other purpose, including for purposes of the application of the Uniform Code of Military Justice.

(d) This section does not affect the application of Section 431.085 on its own terms to a person who is a member of the state military forces ordered into active service of the state by proper authority under other law.

§421.062. Liability under Interlocal Contract

(a) In this section, "interlocal contract" has the meaning assigned by Section 791.003.

(b) A state or local agency that furnishes a service related to a homeland security activity under an interlocal contract is immune from civil liability for any act or omission resulting in death, damage, or injury while acting under the interlocal contract if:

(1) the interlocal contract expressly states that the furnishing state or local agency is not responsible for any civil liability that arises from the furnishing of a service under the contract; and

(2) the state or local agency committed the act or omission while acting in good faith and in the course and scope of its functions to provide a service related to a homeland security activity.

(c) This section may not be interpreted as a waiver of any immunity that might exist in the absence of an interlocal contract or a provision in an interlocal contract as set forth in Subsection (b).

[Sections 421.063–421.070 reserved for expansion]

SUBCHAPTER D.

COOPERATION AND ASSISTANCE; FUNDING

§421.071. Cooperation and Assistance

A state or local agency that performs a homeland security activity or a nongovernmental entity that contracts with a state or local agency to perform a homeland security activity shall cooperate with and assist the office of the governor, the Critical Infrastructure Protection Council, the Texas Infrastructure Protection Communications Center, and the National Infrastructure Protection Center in the performance of their duties under this chapter and other state or federal law.

§421.072. Funding

(a) The office of the governor shall:

(1) allocate available federal and state grants and other funding related to homeland security to state and local agencies that perform homeland security activities;

(2) periodically review the grants and other funding for appropriateness and compliance; and

(3) designate state administering agencies to administer all grants and other funding to the state related to homeland security.

(b) State and local agencies that perform homeland security activities shall inform the office of the governor about any actions taken relating to requests for revenue, grants, or other funding for homeland security activities or initiatives.

(c) A state or local agency that receives a grant or other funding related to homeland security must provide an annual report to the office of the governor detailing the agency's compliance with the state homeland security strategy.

[Sections 421.073–421.080 reserved for expansion]

SUBCHAPTER E.**TEXAS INFRASTRUCTURE PROTECTION
COMMUNICATIONS CENTER****§421.081. Facilities and Administrative Support**

The Department of Public Safety of the State of Texas shall provide facilities and administrative support for the Texas Infrastructure Protection Communications Center.

§421.082. Powers and Duties

(a) The center shall serve as the state's primary entity for the planning, coordination, and integration of government communications capabilities to help implement the governor's homeland security strategy and ensure an effective response in the event of a homeland security emergency.

(b) The center's duties include:

(1) promotion of emergency preparedness;

(2) receipt and analysis of information, assessment of threats, and issuance of public warnings related to homeland security emergencies; and

(3) authorization and facilitation of cooperative efforts related to emergency response and recovery efforts in the event of a homeland security emergency.

(c) In performing its duties under this section, the center shall aim to:

(1) reduce the vulnerability of at-risk or targeted entities to homeland security emergencies; and

(2) prevent or minimize damage, injury, loss of life, and loss of property in the event of a homeland security emergency.

(d) The center shall perform its duties under circumstances prescribed by and as directed by the governor's homeland security strategy.

PERTINENT PROVISIONS OF OCCUPATIONS CODE

CHAPTER 159. PHYSICIAN-PATIENT COMMUNICATION

§159.004. Exceptions to Confidentiality in Other Situations

An exception to the privilege of confidentiality in a situation other than a court or administrative proceeding, allowing disclosure of confidential information by a physician, exists only with respect to the following:

- (1) a governmental agency, if the disclosure is required or authorized by law;
- (2) medical or law enforcement personnel, if the physician determines that there is a probability of:
 - (A) imminent physical injury to the patient, the physician, or another person; or
 - (B) immediate mental or emotional injury to the patient;
- (3) qualified personnel for research or for a management audit, financial audit, or program evaluation, but the personnel may not directly or indirectly identify a patient in any report of the research, audit, or evaluation or otherwise disclose identity in any manner;
- (4) those parts of the medical records reflecting charges and specific services provided if necessary in the collection of fees for medical services provided by a physician, professional association, or other entity qualified to provide or arrange for medical services;
- (5) a person who has consent as provided by Section 159.005;
- (6) a person, corporation, or governmental agency involved in the payment or collection of fees for medical services provided by a physician;
- (7) another physician or other personnel acting under the direction of the physician who participate in the diagnosis, evaluation, or treatment of the patient;
- (8) an official legislative inquiry regarding state hospitals or state schools, if:
 - (A) information or a record that identifies a patient or client is not released for any purpose unless proper consent to the release is given by the patient; and

(B) only records created by the state hospital or school or its employees are included; or

(9) health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient.

**PERTINENT PROVISIONS OF
TEXAS ADMINISTRATIVE CODE**

TITLE 25. HEALTH SERVICES

PART 1. Department of State Health Services

CHAPTER 85. HEALTH AUTHORITIES

SUBCHAPTER A.

LOCAL PUBLIC HEALTH

RULE §85.1. HEALTH AUTHORITIES

(a) A health authority is a physician appointed under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121 by the governing body of a city, county, or public health district to administer the state and local laws relating to public health.

(b) A health authority must be appointed in a municipality or county that has established a local health department or public health district.

(1) The director of a local health department or public health district, if the director is a physician, shall be the health authority within the jurisdiction of the local health department or district.

(2) If a non-physician serves as the director of a local health department or public health district, the director shall appoint a physician to serve as the health authority within the jurisdiction of such local health department or district subject to the approval of the governing body of the local health department or public health district. No action is required by the Board of Health (board) to further approve the appointment.

(c) A health authority may be appointed, but is not required to be appointed, in a municipality or county that has not established a local health department or public health district unless it falls under subsection (d) of this section. The governing body of the municipality or the commissioners court of the county may appoint the health authority within its jurisdiction.

(d) A health authority serves for a term of two years and may be appointed to successive terms.

(e) A regional director of the department shall perform the duties of a health authority for a municipality, county, public health district, or entity authorized to appoint a health authority in a jurisdiction in the regional director's region in which there is no health authority. A regional director is a physician who is employed by the department and serves as the

chief administrative officer of a region. A region is a geographic area of the State of Texas designated by the department.

(f) A regional director of the department may perform some or all of the duties of a health authority if an appointed health authority fails to perform duties prescribed by the board in this section. At the request of the appointing authority, a regional director may serve as a health authority because of the absence or incapacity of the appointed health authority. No action by the board is necessary to further approve a regional director's performance or service.

(g) A health authority shall perform each duty that is necessary to implement and enforce a law to protect the public health as stated in the Health and Safety Code, §121.024.

(h) An appointed health authority shall take the official oath required by the Texas Constitution, Article 16, §1, including the statement of appointed officer and file a copy of the oath and appointment with the appropriate regional office within ten working days of the date of taking the oath.

(i) If a health authority ceases to hold office for any reason, the appointing authority shall immediately notify the department and appropriate regional director. When a new health authority has been appointed, the person will take the action outlined in subsection (i) of this section and notify the appropriate regional office of the change.

CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER A.

CONTROL OF COMMUNICABLE DISEASES

§97.1. Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Act — Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.

(2) Advanced practice nurse — A registered nurse authorized by the Board of Nurse Examiners to practice as an advanced practice nurse based on completing an advanced educational program. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and clinical nurse specialist.

(3) Carrier — An infected person or animal that harbors a specific infectious agent in the absence of discernible clinical disease and serves as a potential source or reservoir of infection.

(4) Case — As distinct from a carrier, the term “case” is used to mean a person or animal in whose tissues the etiological agent of a communicable disease is lodged and which usually produces signs or symptoms of disease. Evidence of the presence of a communicable disease may also be revealed by laboratory findings.

(5) Commissioner — Commissioner of Health.

(6) Communicable disease — An illness due to an infectious agent or its toxic products which is transmitted directly to a well person from an infected person or animal, or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

(7) Contact — A person or animal that has been in such association with an infected person or animal or a contaminated environment so as to have had opportunity to acquire the infection.

(8) Department — Department of State Health Services.

(9) Disinfection — Destruction of infectious agents outside the body directly applied by chemical or physical means.

(10) *Enterococcus* Species — Any *Enterococcus* bacteria isolated in a laboratory.

(11) Epidemic — The occurrence in a community or region of a group of illnesses of similar nature, clearly in excess of normal expectancy, and derived from a common or a propagated source.

- (12) Exposure — A situation or circumstance in which there is significant risk of becoming infected with the etiologic agent for the disease involved.
- (13) Health authority — A physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121. The health authority, for purposes of these sections, may be:
- (A) a local health authority:
- (i) director of a local health department; or
- (ii) physician as appointed by the Commissioner of Health if there is no director of a local health department.
- (B) a regional director of the Department of State Health Services if no physician has been appointed by the Commissioner of Health as a local health authority.
- (14) Hospital laboratory — Any laboratory that performs laboratory test procedures for a patient of a hospital either as a part of the hospital or through contract with the hospital.
- (15) Notifiable condition — Any disease or condition that is required to be reported under the Act or by these sections. See §97.3 of this title (relating to What Condition To Report and What Isolates To Report or Submit). Any outbreak, exotic disease, or unusual group expression of illness which may be of public health concern, whether or not the disease involved is listed in §97.3 of this title, shall be considered a “notifiable condition”. The term “notifiable condition” is the same as the term “reportable disease” as used in the Health and Safety Code.
- (16) Outbreak — See definition of epidemic in this section.
- (17) Penicillin resistant *Streptococcus pneumoniae* — *Streptococcus pneumoniae* with a penicillin minimum inhibitory concentration (MIC) of 2 µg/mL or greater (high level), and/or an intermediate level resistance of 0.1–1 µg/mL.
- (18) Physician — A person licensed by the Texas State Board of Medical Examiners to practice medicine in Texas.
- (19) Physician assistant — A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.
- (20) Regional director — The physician who is the chief administrative officer of a region as designated by the department under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121.

- (21) Report — Information that is required to be provided to the department.
- (22) Report of a disease — The notification to the appropriate authority of the occurrence of a specific communicable disease in man or animals, including all information required by the procedures established by the department.
- (23) Research facility — A facility that is licensed by the United States Department of Agriculture to use vertebrate animals for research purposes and is in compliance with the federal Animal Welfare Act (7 U.S.C., Chapter 54).
- (24) School Administrator — The city or county superintendent of schools or the principal of any school not under the jurisdiction of a city or county board of education.
- (25) Significant risk — A determination relating to a human exposure to an etiologic agent for a particular disease, based on reasonable medical judgments given the state of medical knowledge, relating to the following:
- (A) nature of the risk (how the disease is transmitted);
 - (B) duration of the risk (how long an infected person may be infectious);
 - (C) severity of the risk (what is the potential harm to others); and
 - (D) probability the disease will be transmitted and will cause varying degrees of harm.
- (26) Specimen Submission Form G-1 — A multipurpose laboratory specimen submission form available from the Department of State Health Services, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas, 78756-3199.
- (27) Vancomycin resistant *Enterococcus* species — *Enterococcus* species with a vancomycin MIC greater than 16 micrograms per milliliter ($\mu\text{g}/\text{mL}$) or a disk diffusion zone of 14 millimeters or less. Vancomycin intermediate *Enterococcus* (e.g., *Enterococcus casseliflavus* and *Enterococcus gallinarum*) with a vancomycin MIC of 8 $\mu\text{g}/\text{mL}$ –16 $\mu\text{g}/\text{mL}$ do not need to be reported.
- (28) Vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species — *Staphylococcus aureus* or a coagulase negative *Staphylococcus* species with a vancomycin MIC of 8 $\mu\text{g}/\text{mL}$ or greater.
- (29) Veterinarian — A person licensed by the Texas State Board of Veterinary Medical Examiners to practice veterinary medicine in Texas.

97.2. Who Shall Report

(a) A physician, dentist, veterinarian, chiropractor, advanced practice nurse, physician assistant, or person permitted by law to attend a pregnant woman during gestation or at the delivery of an infant shall report, as required by these sections, each patient (person or animal) he or she shall examine and who has or is suspected of having any notifiable condition, and shall report any outbreak, exotic disease, or unusual group expression of illness of any kind whether or not the disease is known to be communicable or reportable. An employee from the clinic or office staff may be designated to serve as the reporting officer. A physician, dentist, veterinarian, or chiropractor who can assure that a designated or appointed person from the clinic or office is regularly reporting every occurrence of these diseases or health conditions in their clinic or office does not have to submit a duplicate report.

(b) The chief administrative officer of a hospital shall appoint one reporting officer who shall be responsible for reporting each patient who is medically attended at the facility and who has or is suspected of having any notifiable condition. Hospital laboratories may report through the reporting officer or independently in accordance with the hospital's policies and procedures.

(c) Except as provided in subsection (b) of this section, any person who is in charge of a clinical laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopic, bacteriologic, virologic, parasitologic, serologic, or other evidence of a notifiable condition, shall report as required by this section.

(d) School authorities, including a superintendent, principal, teacher, school health official, or counselor of a public or private school and the administrator or health official of a public or private institution of higher learning should report as required by these sections those students attending school who are suspected of having a notifiable condition. School administrators who are not medical directors meeting the criteria described in §97.132 of this title (relating to Who Shall Report Sexually Transmitted Diseases) are exempt from reporting sexually transmitted diseases.

(e) Any person having knowledge that a person or animal is suspected of having a notifiable condition should notify the local health authority or the department and provide all information known to them concerning the illness and physical condition of such person or persons.

(f) Sexually transmitted diseases including HIV and AIDS shall be reported in accordance with §97.132 of this title.

(g) Failure to report a notifiable condition is a Class B misdemeanor under the Texas Health and Safety Code, §81.049.

§97.3. What Conditions to Report and What Isolates to Report or Submit

(a) Humans.

(1) Identification of notifiable conditions.

(A) The most current edition of the Department of State Health Services's (department) publication titled "Identification, Confirmation, and Reporting of Notifiable Conditions" shall be reported under these sections based on a specific diagnosis, test procedure, and/or confirmatory test. Copies are available upon request to the Materials Acquisition and Management Division, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. Copies are filed in the Infectious Disease Epidemiology and Surveillance Division, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 and are available for public inspection during regular working hours.

(B) Repetitive test results from the same patient do not need to be reported except those for mycobacterial infections.

(2) Notifiable conditions or isolates.

(A) Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism-adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox (varicella); *Chlamydia trachomatis* infection; Creutzfeldt-Jakob disease (CJD); cryptosporidiosis; cyclosporiasis; dengue; diphtheria; ehrlichiosis; encephalitis (specify etiology); *Escherichia coli*, enterohemorrhagic infection; gonorrhea; Hansen's disease (leprosy); *Haemophilus influenzae* type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, B, D, E, and unspecified (acute); hepatitis C (newly diagnosed infection, effective 1/1/00); hepatitis B, (chronic) identified prenatally or at delivery as described in §97.135 of this title (relating to Serologic Testing during Pregnancy and Delivery); human immunodeficiency virus (HIV) infection; legionellosis; listeriosis; Lyme disease; malaria; measles (rubeola); meningitis (specify type); meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; Q fever; rabies; relapsing fever; rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; smallpox; spotted fever group rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease: invasive group A, invasive group B, or invasive *Streptococcus pneumoniae*; syphilis; tetanus; trichinosis; tuberculosis; tularemia; typhus; *Vibrio* infection, including cholera (specify species); viral hemorrhagic fevers; yellow fever; yersiniosis; and Severe Acute Respiratory Syndrome (SARS) as defined by the United States Centers for Disease Control and Prevention.

(B) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(C) The following organisms shall be reported: *Enterococcus* species; vancomycin resistant *Enterococcus* species; vancomycin resistant *Staphylococcus aureus*; vancomycin resistant coagulase negative *Staphylococcus* species; *Streptococcus pneumoniae*; and penicillin-resistant *Streptococcus pneumoniae*.

(3) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(A) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with §§97.132–97.135 of this title (relating to Sexually Transmitted Diseases, including AIDS and HIV infection);

(B) for tuberculosis disease — complete name, date of birth, physical address and county of residence, information on which diagnosis was based or suspected. In addition, if known, radiographic or diagnostic imaging results and date(s); all information necessary to complete the most recent versions of forms TB 400 A & B (Report of Case and Patient Services), TB 340 (Report of Contacts) and TB 341 (Continuation of Report of Contacts); laboratory results used to guide prescribing, monitoring or modifying antibiotic treatment regimens for tuberculosis to include, but not limited to, liver function studies, renal function studies, and serum drug levels; pathology reports related to diagnostic evaluations of tuberculosis; reports of imaging or radiographic studies; records of hospital or outpatient care to include, but not limited to, histories and physical examinations, discharge summaries and progress notes; records of medication administration to include, but not limited to, directly observed therapy (DOT) records, and drug toxicity and monitoring records; a listing of other patient medications to evaluate the potential for drug-drug interactions; and copies of court documents related to court ordered management of tuberculosis;

(C) for contacts to a known case of tuberculosis — complete name; date of birth; physical address; county of residence; and all information necessary to complete the most recent versions of forms TB 400 A & B (Report of Case and Patient Services), TB 340 (Report of Contacts), and TB 341 (Continuation of Report of Contacts);

(D) for other persons identified with latent TB infection — complete name; date of birth; physical address and county of residence; and all information necessary to complete the most recent versions of forms TB 400 A & B (Report of Case and Patient Services);

(E) for hepatitis B, (chronic and acute) identified prenatally or at delivery — mother's name, address, telephone number, age, date of birth, sex, race and ethnicity, preferred language, hepatitis B laboratory test results; estimated delivery date or date and time of birth; name and phone number of delivery hospital or planned delivery hospital; name of infant; name, phone number, and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant;

(F) for chickenpox — name, date of birth, sex, race and ethnicity, address, date of onset, and varicella vaccination history;

(G) for all other notifiable conditions listed in paragraph (2)(A) of this subsection — name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, type of diagnosis, date of onset, and physician name, address, and telephone number;

(H) for all isolates of *Enterococcus* species and all isolates of *Streptococcus pneumoniae* regardless of resistance patterns — numeric totals at least quarterly;

(I) for vancomycin resistant *Enterococcus* species; penicillin resistant *Streptococcus pneumoniae*; vancomycin resistant *Staphylococcus aureus*; vancomycin resistant coagulase negative *Staphylococcus* species, — name, city of submitter, date of birth or age, sex, anatomic site of culture, and date of culture; and

(J) for Hansen's disease — name; date of birth; sex; race and ethnicity; social security number; disease type; place of birth; address; telephone number; date entered Texas; date entered U.S.; education/employment; insurance status; location and inclusive dates of residence outside U.S.; date of onset and history prior to diagnosis; date of initial biopsy and result; date initial drugs prescribed and name of drugs; name, date of birth and relationship of household contacts; and name, address, and telephone number of physician.

(4) Diseases requiring submission of cultures. For all *Neisseria meningitides* from normally sterile sites, all vancomycin resistant *Staphylococcus aureus*, and vancomycin resistant coagulase negative *Staphylococcus* species — pure cultures shall be submitted accompanied by a Specimen Submission Form G-1.

(5) Laboratory reports. Reports from laboratories shall include name, patient identification number, address, telephone number, age, date of birth, sex, race and ethnicity, specimen submitter name, address, and phone number, specimen type, date specimen collected, disease test and test result, normal test values, date of test report, and physician name and telephone number.

(b) Animals.

(1) Clinically diagnosed or laboratory-confirmed animal cases of the following diseases are reportable: anthrax, arboviral encephalitis, *Mycobacterium tuberculosis* infection in animals other than those housed in research facilities, plague, and psittacosis. Also, all non-negative rabies tests performed on animals from Texas at laboratories located outside of Texas shall be reported; all non-negative rabies tests performed in Texas will be reported by the laboratory conducting the testing. In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(2) The minimal information that shall be reported for each disease includes species and number of animals affected, disease or condition, name and phone number of the veterinarian or other person in attendance, and the animal(s) owner's name, address, and phone number. Other information may be required as part of an investigation in accordance with Texas Health and Safety Code, §81.061.

§97.4. When to Report a Condition or Isolate; Where to Submit an Isolate; Where to Report a Condition or Isolate

(a) Humans.

(1) The following notifiable conditions are public health emergencies and suspect cases shall be reported immediately by phone to the local health authority or the regional director of the Department of State Health Services (department): anthrax; botulism, foodborne; diphtheria; *Haemophilus influenzae* type b infection, invasive; measles (rubeola); meningococcal infection, invasive; pertussis; poliomyelitis, acute paralytic; plague; rabies; smallpox; viral hemorrhagic fevers; yellow fever. Vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species shall be reported immediately by phone to the Infectious Disease Epidemiology and Surveillance Division, Department of State Health Services, Austin at (800) 252-8239.

(2) The following notifiable conditions shall be reported within one working day of identification as a suspected case: brucellosis, hepatitis A (acute), Q fever, rubella (including congenital), tularemia, tuberculosis, and *Vibrio* infection (including cholera).

(3) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with §§97.132–97.135 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV infection);

(4) Tuberculosis antibiotic susceptibility results should be reported by laboratories no later than one week after they first become available.

(5) For all other notifiable conditions not listed in paragraphs (1)–(3) of this subsection, reports of disease shall be made no later than one week after a case or suspected case is identified.

(6) For *Enterococcus* species; vancomycin resistant *Enterococcus* species; *Streptococcus pneumoniae*; and penicillin-resistant *Streptococcus pneumoniae* — reports shall be made no later than the last working day of March, June, September, and December.

(7) All *Neisseria meningitides* from normally sterile sites, all vancomycin resistant *Staphylococcus aureus*, and all vancomycin resistant coagulase negative *Staphylococcus* species shall be submitted as pure cultures to the Department of State Health Services, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas 78756-3199 as they become available.

(b) Animals.

(1) Reportable conditions affecting animals shall be reported within one working day following the diagnosis.

(2) Reportable conditions in animals shall be reported to either the appropriate Department of State Health Services regional zoonosis control office or the Zoonosis Control Division office in Austin.

(3) Conditions in animals that are reportable to both the Department of State Health Services and the Texas Animal Health Commission can be reported to either one of the agencies which will forward the information to the other agency.

§97.5. Where To Report a Condition or Isolate; Where To Submit an Isolate

(a) A physician, dentist, veterinarian, chiropractor, reporting officer of a hospital and a person in charge of a hospital laboratory (if the laboratory reports independently), or person permitted by law to attend a pregnant woman during gestation or at the delivery of an infant, or school authority shall report to the local health authority where the office, clinic, hospital, or school is located. If there is no local health authority appointed for the jurisdiction where the office, clinic, hospital, or school is located, the report shall be made to the Department of State Health Services (department) regional director. Public health emergencies shall be reported to the department's central office if the local health authority or the department's regional director is not immediately accessible.

(b) The administrative officer of a clinical laboratory, blood bank, mobile unit, or other facility shall report a condition or submit an isolate as follows.

- (1) If the laboratory examination was requested by a physician, notice shall be sent to the local health authority for the jurisdiction where the physician's office is located, to the department's regional director for the jurisdiction where the physician's office is located if no local health authority exists, or to the department's central office when the regional director or local health authority are unknown to the laboratory.
- (2) If the laboratory examination was not requested by a physician, notice shall be sent to the local health authority for the jurisdiction where the laboratory is located, to the department's regional director for the jurisdiction where the laboratory is located if no local health authority has been appointed, or to the department's central office when the regional director or local health authority are unknown to the laboratory.
- (3) For vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species immediately report by phone to the Infectious Disease Epidemiology and Surveillance Division at 1-800-252-8239. For *Enterococcus* species; vancomycin resistant *Enterococcus* species; *Streptococcus pneumoniae*; and penicillin resistant *Streptococcus pneumoniae*; reports shall be mailed to the Infectious Disease Epidemiology and Surveillance Division, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199, or faxed to the Infectious Disease Epidemiology and Surveillance Division at (512) 458-7616.
- (4) All *Neisseria meningitidis* from normally sterile sites, all vancomycin resistant *Staphylococcus aureus*, and all vancomycin resistant coagulase negative *Staphylococcus* species shall be submitted as pure cultures to the Department of State Health Services, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas 78756-3199.
- (c) Sexually transmitted diseases including HIV and AIDS shall be reported in accordance with §§97.132–97.135 of this title (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

§97.6. Reporting and Other Duties of Local Health Authorities and Regional Directors

- (a) The purpose of this section is to provide procedures for local health authorities and regional directors to report a disease to the Department of State Health Services's (department) central office.
- (b) Those notifiable conditions identified as public health emergencies in §97.4(a) of this title (relating to When to Report a Condition or Isolate; When to Submit an Isolate; Where to Report a Condition or Isolate) shall be reported immediately to the department by telephone.

(c) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection and syphilis shall be reported in accordance with §§97.132–97.135 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV infection).

(d) For notifiable conditions not listed in subsection (c) of this section, the local health authority or the department's regional director shall collect reports of disease and transmit the following information at weekly intervals as directed by the department: name, city, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, address, and telephone number.

(e) Transmittal may be by telephone, mail, courier, or electronic transmission.

(1) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked "Confidential."

(2) If by electronic transmission, including facsimile transmission by telephone, the local health authority or the department's regional director must obtain prior approval of the manner and form of the transmission from the commissioner of health (commissioner) or his/her designee. Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal.

(f) The health authority shall notify health authorities in other jurisdictions of a case or outbreak of a communicable disease that has been reported if the case resides in another jurisdiction or there is cause to believe transmission of a disease may have occurred in another jurisdiction. The department shall assist the health authority in providing such notifications upon request. The health authority of the area where the case or outbreak is diagnosed shall report the case or outbreak to the department on the same basis as other reports.

(g) The health authority upon identification of a case or upon receipt of notification or report of disease shall take such action and measures as may be necessary to conform with the appropriate control measure standards. The health authority may upon identification of a case or upon report of a communicable disease in a child attending a public or private child-care facility or a school notify the owner or operator of the child-care facility or the school administrator. The commissioner is authorized to amend, revise, or revoke any control measure or action taken by the health authority if necessary or desirable in the administration of a regional or statewide public health program or policy.

(h) The health authority is empowered to close any public or private child-care facility, school or other place of public or private assembly when in his or her opinion such closing is necessary to protect the public health; and such school or other place of public or private assembly shall not reopen until permitted by the health authority who caused its closure.

(i) Persons reporting notifiable conditions in animals shall be referred to the central office or the appropriate regional office of the department's Zoonosis Control Division.

§97.7. Diseases Requiring Exclusion from Child-care Facilities and Schools

(a) The Department of State Health Services (department) publication titled "Recommendations for the Prevention and Control of Communicable Diseases in a Group-Care Setting" may be used to determine the incubation period, early signs of illness, and prevention/treatment measures of communicable conditions. Copies are available from the Infectious Disease Epidemiology and Surveillance Division, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 upon request.

(b) The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable condition. Exclusion shall continue until the readmission criteria for the conditions are met. The conditions and readmission criteria are as follows:

- (1) amebiasis — exclude until treatment is initiated;
- (2) campylobacteriosis — exclude until after diarrhea and fever subside;
- (3) chickenpox — exclude until after seven days from onset of rash, except immunocompromised individuals who should not return until all blisters have crusted over (may be longer than seven days);
- (4) common cold — exclude until fever subsides;
- (5) conjunctivitis, bacterial and/or viral — exclude until written permission and/or permit is issued by a physician or local health authority;
- (6) fever — exclude until fever subsides;
- (7) fifth disease (erythema infectiosum) — exclude until fever subsides;
- (8) gastroenteritis, viral — exclude until diarrhea subsides;
- (9) giardiasis — exclude until diarrhea subsides;

- (10) head lice (pediculosis) — exclude until one medicated shampoo or lotion treatment has been given;
- (11) hepatitis, viral, Type A — exclude until one week after onset of illness;
- (12) impetigo — exclude until treatment has begun;
- (13) infectious mononucleosis — exclude until physician decides or fever subsides;
- (14) influenza — exclude until fever subsides;
- (15) measles (rubeola) — exclude until four days after rash onset or in the case of an outbreak, unimmunized children should also be excluded for at least two weeks after last rash onset occurs;
- (16) meningitis, bacterial — exclude until written permission and/or permit is issued by a physician or local health authority;
- (17) meningitis, viral — exclude until fever subsides;
- (18) mumps — exclude until nine days after the onset of swelling;
- (19) pertussis (whooping cough) — exclude until completion of five days of antibiotic therapy;
- (20) ringworm of the scalp — exclude until treatment has begun;
- (21) rubella (German measles) — exclude until seven days after rash onset or in the case of an outbreak, unimmunized children should be excluded for at least three weeks after last rash onset occurs;
- (22) salmonellosis — exclude until diarrhea and fever subside;
- (23) scabies — exclude until treatment has begun;
- (24) shigellosis — exclude until diarrhea and fever subside;
- (25) streptococcal sore throat and scarlet fever — exclude until 24 hours from time antibiotic treatment was begun and fever subsided; and
- (26) tuberculosis, pulmonary — exclude until antibiotic treatment has begun and a physician's certificate or health permit obtained.
- (c) The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable disease designated by the commissioner of health (commissioner) as cause for exclusion until one of the criteria listed in subsection (d) of this section is fulfilled.

(d) Any child excluded for reason of communicable disease may be readmitted, as determined by the health authority, by submitting:

(1) a certificate of the attending physician, advanced practice nurse, or physician assistant attesting that the child does not currently have signs or symptoms of a communicable disease or to the disease's non-communicability in a child-care or school setting;

(2) a permit for readmission issued by a local health authority; or

(3) readmission criteria as established by the commissioner.

§97.8. General Control Measures for Notifiable Conditions

Except for diseases for which equivalent measures of investigation and control are specifically provided in other sections in this chapter, the commissioner of health (commissioner), a health authority, or a duly authorized representative of the commissioner or a health authority may proceed as follows.

(1) Investigation shall be made, as the circumstances may require, for verifying the diagnosis, ascertaining the source of the causative agent, disclosing unreported cases, and finding contacts. On request, a person shall provide the Department of State Health Services (department) or health authority with records, data, and other information according to the written instruction of the department or health authority. The health authority and the department shall keep this information confidential.

(2) Laboratory specimens of the body tissues, fluids, or discharges and of materials directly or indirectly associated with the case, as may be necessary or desirable in confirmation of the diagnosis or for ascertaining the source of the infection, shall be collected and submitted to a laboratory for examination.

(3) Control techniques, including disinfection, environmental sanitation, immunization, chemoprophylaxis, isolation, preventive therapy, quarantine, education, prevention, and other accepted measures shall be instituted as necessary to reduce morbidity and mortality. In establishing quarantine or isolation, the health authority shall designate and define the limits of the areas in which the persons are quarantined or isolated.

(4) Information concerning the disease and its prevention shall be given to the patient or a responsible member of the patient's household to prevent further spread of the disease.

(5) Control measures implemented by the health authority shall be consistent with and at least as stringent as those control measure standards imposed by the department. Individual control measures implemented by the health authority are subject to review and modification or change by the commissioner.

§97.9. Quarantine of Specific Premises

A health authority may declare a house, building, apartment, room, or place within the health authority's jurisdiction to be a place of quarantine whenever a case of communicable disease occurs therein, and, in the health authority's opinion, it is necessary to do so in order to protect the public health. No person shall leave or enter the place during the period of quarantine except with specific permission of the health authority.

§97.10. Confidential Nature of Case Reporting and Records

(a) All individual morbidity case reports received by the health authority or the Department of State Health Services (department) are confidential records and not public records.

(b) To implement disease control measures authorized in these sections, it may be necessary for the health authority or the department to investigate public or private health records including patient medical records pertinent to the notifiable condition. On request, a person shall provide the department with records, data, and other information according to the written instruction of the department. The health authority and the department shall keep this information confidential.

(c) The department may use information obtained from reports or health records for statistical and epidemiological studies which may be public information as long as an individual is not identifiable.

§97.11. Notification of Emergency Medical Services Employee, Fire Fighter, or Peace Officer of Possible Exposure to a Disease

(a) Purpose. The Communicable Disease Prevention and Control Act (Act), §81.048, requires a licensed hospital to notify a health authority in certain instances when an emergency medical service employee, peace officer, or fire fighter may have been exposed to a reportable disease during the course of duty from a person delivered to the hospital under conditions that were favorable for transmission.

(b) Disease and criteria which constitute exposure. The following diseases and conditions constitute a possible exposure to the disease for the purposes of the Act, §81.048:

(1) chickenpox; diphtheria; measles (rubeola); pertussis; pneumonic plague; pulmonary or laryngeal tuberculosis; and any viral hemorrhagic fever, if the worker and the patient are in the same room, vehicle, ambulance, or other enclosed space;

(2) *Haemophilus influenzae* type b infection, invasive; meningitis (specify type); meningococcal infections, invasive; mumps; poliomyelitis; Q fever (pneumonia); rabies; and rubella, if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(3) acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; dengue; ehrlichiosis; hepatitis, viral; human immunodeficiency virus (HIV) infection; malaria; plague; syphilis; tularemia; typhus; any viral hemorrhagic fever; and yellow fever, if there has been a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; a splatter or aerosol into the eye, nose, or mouth; or any significant contamination of an open wound or non-intact skin with blood or body fluids; and

(4) amebiasis; campylobacteriosis; cholera; cryptosporidiosis; *Escherichia coli* O157:H7 infection; hepatitis A; salmonellosis, including typhoid fever; shigellosis; and *Vibrio* infections, if fecal material is ingested.

(c) Notification processes. The following notification processes shall apply when possible exposures to notifiable conditions occur.

(1) If the hospital has knowledge that, on admission to the hospital, the person transported has any of the notifiable conditions listed in subsection (b)(1) of this section, then notice of a possible exposure of an emergency medical service employee, peace officer, or fire fighter to the disease shall be given to the health authority for the jurisdiction where the hospital is located.

(2) For possible exposures to any of the diseases listed in subsection (b)(2)–(4) of this section, the emergency medical service employee, peace officer, or fire fighter shall provide a medical professional at the hospital with notice, preferably written, of the circumstances of the possible exposure. Once the hospital has knowledge of a possible exposure, then notice shall be given as follows:

(A) The hospital shall report the following information to the health authority for the jurisdiction where the hospital is located:

(i) the name of the emergency medical service employee, peace officer, or fire fighter possibly exposed;

(ii) the date of the exposure;

(iii) the circumstances of the exposure;

(iv) whether laboratory testing was performed for diseases potentially transmitted by such exposures; and

(v) positive test results for these diseases.

(B) The health authority shall determine whether or not significant risk of disease transmission exists and report his/her assessment of the possible exposure event to the director of the entity that employs the emergency medical service employee, peace officer, or fire fighter.

(C) The director of the entity that employs the emergency medical service employee, peace officer, or fire fighter shall inform the employee of the health authority's assessment.

(D) A person notified of a possible exposure under this section shall maintain the confidentiality of the information provided to him or her.

(d) Obligation to test. This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital.

§97.12. Death of a Person with Certain Communicable Diseases

(a) If a physician has knowledge that a person had, at the time of death, a communicable disease listed in subsection (c) of this section, then the hospital administrator, clinic administrator, nurse, or the physician shall affix or cause to be affixed a tag on the body, preferably the great toe.

(b) The tag shall be on card stock paper and shall be no smaller than five centimeters by ten centimeters. The tag shall include the words "COMMUNICABLE DISEASE — BLOOD/BODY SUBSTANCE PRECAUTIONS REQUIRED" in letters no smaller than six millimeters in height. The name of the deceased person shall be written on the tag. The tag shall remain affixed to the body until the preparation of the body for burial has been completed.

(c) Diseases that shall require tagging are acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; cholera; Creutzfeldt-Jakob disease; hepatitis, viral; human immunodeficiency virus (HIV) infection; plague; Q fever; rabies; relapsing fever; Rocky Mountain spotted fever; syphilis; tuberculosis; tularemia; and viral hemorrhagic fevers.

(d) All persons should routinely practice standard infection control procedures when performing postmortem care on a deceased person who is known or suspected of having a communicable disease listed in subsection (c) of this section.

§97.13. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Notifiable Conditions and Workers' Compensation Issues Relevant to Postexposure Management of Emergency Responders

(a) Purpose. The Communicable Disease Prevention and Control Act, Health and Safety Code, §81.050, provides a mechanism by which an emergency medical service employee, paramedic, fire fighter, correctional officer, or law enforcement officer, who receives a bona fide exposure to a notifiable condition in the course of employment or volunteer service may request the Department of State Health Services (department) or the department's designee to order testing of the person who may have exposed the worker.

(b) Definitions. For the purposes of this section, the following words and/or terms will have the following meanings, unless the context clearly indicates otherwise.

(1) Correctional officer — A worker whose normal duties and responsibilities include management or supervision of incarcerated or detained persons.

(2) Emergency responder — An emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer who is employed by or volunteers for an employer with the responsibility of answering emergency calls for assistance.

(3) Requestor — An emergency responder who presents a sworn affidavit to a health authority to request testing of a person who may have exposed him/her to a notifiable condition in the course of his/her duties.

(4) Source — The person who may have exposed an emergency responder to a notifiable condition during the emergency responder's course of duties.

(c) Diseases and criteria that constitute exposure. The notifiable conditions and the criteria that constitute exposure to such diseases are as outlined in §97.11(b)(1)–(4) of this title (relating to Notification of Emergency Medical Service Employee, Fire Fighter, or Peace Officer of Possible Exposure to a Disease).

(d) The department's designee. For the purposes of implementing the Health and Safety Code, §81.050(d), (e), and (h), the following physicians have been delegated by the department to be the department's designee who will determine if a risk of exposure to a notifiable condition has occurred:

(1) the health authority for the jurisdiction in which the emergency responder is employed;

(A) if the health authority does not choose to make a determination of the risk of exposure, a licensed physician employed by the local health department who has responsibility for the control of notifiable conditions in the jurisdiction served by the health department; or

(B) if the health authority does not choose to make a determination of the risk of exposure and there is not a separate physician employed by the county or municipal health department with responsibility for the control of notifiable condition, or for counties which do not have an appointed health authority, the regional director of the department of which the county or municipality is a part; and

(2) for the Texas Department of Criminal Justice (TDCJ), the TDCJ Deputy Director of Health Services (Institutional Division) shall serve as the designated health official in determining risk of exposure to correctional officers employed by the TDCJ.

(e) Criteria under which a request for mandatory testing can be made. A request under this section may be made only if the emergency responder:

(1) has experienced the exposure in the course of his or her employment or volunteer service;

(2) believes that the exposure places him or her at risk of a notifiable condition; and

(3) presents to the department's designee a sworn affidavit that delineates the reasons for the request.

(f) Initial actions required of the department's designee. Upon receiving a request for mandatory testing in accordance with subsection (e) of this section, the department's designee shall:

(1) review the emergency responder's request and inform him or her whether the request meets the criteria establishing risk of infection with a notifiable condition;

(2) determine which diagnostic tests may be indicated to verify exposure to certain notifiable conditions;

(3) give the source who is subject to the order prompt and confidential written notice of the order which must include the following items:

(A) the grounds and provision of the order, and the factual basis for its issuance;

(B) a referral to appropriate health care facilities where the source can be tested for certain notifiable conditions;

(C) a notice to the source who is subject to the order of the right to refuse to be tested; and

(D) a statement of the authority of the department's designee to ask for a court order requiring the test; and

(4) request the prosecuting attorney who represents the state in district court to petition said court for a hearing on the order, in the event that the source who is subject to the order refuses to comply.

(g) Source's right to an attorney. If the source who is subject to the order refuses to comply, and a hearing in district court ensues, then:

(1) the source has a right for an attorney to be present at the hearing;

(2) the court shall appoint an attorney for a source who cannot afford legal representation; and

(3) the source may not waive the right to an attorney unless he/she has consulted with an attorney.

(h) Court proceedings. The district court proceedings include:

(1) a determination as to whether exposure occurred and whether the exposure presents a possible risk of infection as outlined in §97.11(b)(1)–(4) of this title;

(2) consideration of evidence if introduced by either the attorney for the state and/or the attorney for the source;

(3) at the conclusion of the hearing, taking appropriate action being either:

(A) an order requiring counseling and testing of the person for certain notifiable conditions; or

(B) a refusal to issue an order if the court has determined that the counseling and testing of the source is unnecessary; and

(4) the option to assess court costs against the requestor if the court finds that there was not reasonable cause for the request.

(i) Additional actions required of the department's designee. The department's designee shall be responsible for the following actions with respect to testing:

(1) develop protocols for coding test specimens to ensure that any identifying information concerning the source will be destroyed as soon as the testing is complete;

(2) inform the requestor of the test results;

(3) inform both the requestor and the source of the need for medical followup and counseling services in the event that the source is found to have a notifiable condition; and

(4) advise appropriate postexposure medical followup as recommended by the United States Public Health Service.

(j) HIV counseling and testing. HIV counseling and testing conducted under this section must conform to the model protocol on HIV counseling and testing required under the Health and Safety Code, §85.081.

(k) Workers' compensation issues. For the purposes of qualifying for workers' compensation or any other similar benefits for compensation, the following shall apply:

(1) An emergency responder who claims a possible work-related exposure to a notifiable condition must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the tenth day after the date of the exposure, the emergency responder had a test result that indicated an absence of the notifiable condition.

(2) An emergency responder exposed to a notifiable condition during the course of employment shall be entitled to the benefits described in the Texas Government Code, Chapter 607.

(3) A state emergency responder claiming an exposure to HIV infection in the normal course of his/her duties must follow the postexposure procedure mandated by the Health and Safety Code, §85.116, and §97.140 of this title (relating to Counseling and Testing for State Employees Exposed to Human Immunodeficiency Virus (HIV) Infection on the Job).

(4) For posting and notice requirements, refer to the rules of the Texas Workers' Compensation Commission in Title 28, Texas Administrative Code, Chapter 110 (Required Notice of Coverage General Provisions).

(5) For further clarification of workers' compensation issues, emergency responders and their employers should contact the Texas Workers' Compensation Commission at 1-800-252-7031.

(l) Testing of the exposed person. An emergency responder who may have been exposed to a notifiable condition, may not be required to be tested.

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER E.

WAIVERS

§133.81. Waiver Provisions

(a) Request for a waiver. A hospital may submit a written request to the director for a waiver or modification of a particular provision of the Texas Hospital Licensing Act (Act) or a minimum standard in this chapter, except fire safety requirements. The written request shall specify the section(s) of the Act or this chapter for which a waiver is requested.

(b) Consideration. In considering the waiver or modification request, the director shall consider whether the waiver or modification:

(1) will adversely affect the health and safety of the hospital patients, employees, or the general public;

(2) will adversely impact the hospital's participation in the federal Medicare program or accreditation by the Joint Commission on Accreditation of Healthcare Organizations or the American Osteopathic Association;

(3) if not granted, would impose an unreasonable hardship on the hospital in providing adequate care for patients;

(4) will facilitate the creation or operation of the hospital; and

(5) is appropriate when balanced against the best interests of the individuals served or to be served by the hospital.

(c) Supporting documentation. The director may request written documentation from the hospital to support the waiver or modification including, but not limited to:

(1) a statement addressing each of the criteria in subsection (b) of this section;

(2) evidence of approval by the local building and fire authorities;

(3) evidence of provisions in the Act or this chapter which will mitigate any adverse effect of the waiver or modification; and

(4) evidence of any mitigating act in excess of the Act or this chapter which will be used by the hospital to offset any adverse effect of the waiver or modification.

(d) Written recommendation. The director shall submit his written recommendation for granting or denying the waiver to the commissioner of health (commissioner). The director's recommendation shall address each of the criteria in subsection (b) of this section.

(e) Granting order. If the director recommends that the waiver or modification be granted, the commissioner may issue a written order granting the waiver or modification.

(f) Denial of order. If the director recommends that the waiver or modification be denied, the commissioner may issue a written order denying the waiver or modification.

(g) File documentation. The licensing file for the hospital maintained by the Department of State Health Services shall contain a copy of the request, the documents requested in subsection (c) of this section (if applicable), the written recommendation of the director, and the order.

UNITED STATES CODE

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 6A. PUBLIC HEALTH SERVICE

SUBCHAPTER II. GENERAL POWERS AND DUTIES

PART B. FEDERAL-STATE COOPERATION

§243. General grant of authority for cooperation

(a) Enforcement of quarantine regulations; prevention of communicable diseases

The Secretary is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations made pursuant to this chapter which such authorities may be able and willing to provide. The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases and with respect to other public health matters, shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations, and shall advise the several States on matters relating to the preservation and improvement of the public health.

(b) Comprehensive and continuing planning; training of personnel for State and local health work; fees

The Secretary shall encourage cooperative activities between the States with respect to comprehensive and continuing planning as to their current and future health needs, the establishment and maintenance of adequate public health services, and otherwise carrying out public health activities. The Secretary is also authorized to train personnel for State and local health work. The Secretary may charge only private entities reasonable fees for the training of their personnel under the preceding sentence.

(c) Development of plan to control epidemics and meet emergencies or problems resulting from disasters; cooperative planning; temporary assistance; reimbursement of United States

(1) The Secretary is authorized to develop (and may take such action as may be necessary to implement) a plan under which personnel, equipment, medical supplies, and other resources of the Service and other agencies under the jurisdiction of the Secretary may be effectively used to control epidemics of any disease or condition and to meet other health emergencies or problems. The Secretary may enter into agreements providing for the cooperative planning between the Service and public and private community health programs and agencies to cope with health problems (including epidemics and health emergencies).

(2) The Secretary may, at the request of the appropriate State or local authority, extend temporary (not in excess of six months) assistance to States or localities in meeting health emergencies of such a nature as to warrant Federal assistance. The Secretary may require such reimbursement of the United States for assistance provided under this paragraph as he may determine to be reasonable under the circumstances. Any reimbursement so paid shall be credited to the applicable appropriation for the Service for the year in which such reimbursement is received.

PART G. QUARANTINE AND INSPECTION

§264. Regulations to control communicable diseases

(a) Promulgation and enforcement by Surgeon General

The Surgeon General, with the approval of the Administrator [Secretary], is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

(b) Apprehension, detention, or conditional release of individuals

Regulations prescribed under this section shall not provide for the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General.

(c) Application of regulations to persons entering from foreign countries

Except as provided in subsection (d), regulations prescribed under this section, insofar as they provide for the apprehension, detention, examination, or conditional release of individuals, shall be applicable only to individuals coming into a State or possession from a foreign country or a possession.

(d) Apprehension and examination of persons reasonably believed to be infected

(1) Regulations prescribed under this section may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a qualifying stage and

(A) to be moving or about to move from a State to another State; or

(B) to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a State to another State. Such regulations may provide that if upon examination any such individual is found to be infected, he may be detained for such time and in such manner as may be reasonably necessary. For purposes of this subsection, the term “State” includes, in addition to the several States, on the District of Columbia.

(2) For purposes of this subsection, the term “qualifying stage”, with respect to a communicable disease, means that such disease —

(A) is in a communicable stage; or

(B) is in a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals.

(e) Nothing in this section or section 363 [42 USCS §266], or the regulations promulgated under such sections, may be construed as superseding any provision under State law (including regulations and including provisions established by political subdivisions of States), except to the extent that such a provision conflicts with an exercise of Federal authority under this section or section 363 [42 USCS §266].

42 CODE OF FEDERAL REGULATIONS

CHAPTER I. PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER F. QUARANTINE, INSPECTION, LICENSING

PART 70. INTERSTATE QUARANTINE

§70.1 General definitions

As used in this part, terms shall have the following meaning:

- (a) Communicable diseases means illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.
- (b) Communicable period means the period or periods during which the etiologic agent may be transferred directly or indirectly from the body of the infected person or animal to the body of another.
- (c) Conveyance means any land or air carrier, or any vessel as defined in paragraph (h) of this section.
- (d) Incubation period means the period between the implanting of disease organisms in a susceptible person and the appearance of clinical manifestation of the disease.
- (e) Interstate traffic means:
 - (1) The movement of any conveyance or the transportation of persons or property, including any portion of such movement or transportation that is entirely within a State or possession —
 - (i) From a point of origin in any State or possession to a point of destination in any other State or possession; or
 - (ii) Between a point of origin and a point of destination in the same State or possession but through any other State, possession, or contiguous foreign country.
 - (2) Interstate traffic does not include the following:
 - (i) The movement of any conveyance which is solely for the purpose of unloading persons or property transported from a foreign country, or loading persons or property for transportation to a foreign country.

(ii) The movement of any conveyance which is solely for the purpose of effecting its repair, reconstruction, rehabilitation, or storage.

(f) Possession means any of the possessions of the United States, including Puerto Rico and the Virgin Islands.

(g) State means any State, the District of Columbia, Puerto Rico, and the Virgin Islands.

(h) Vessel means any passenger-carrying, cargo, or towing vessel exclusive of:

(1) Fishing boats including those used for shell-fishing;

(2) Tugs which operate only locally in specific harbors and adjacent waters;

(3) Barges without means of self-propulsion;

(4) Construction-equipment boats and dredges; and

(5) Sand and gravel dredging and handling boats.

§70.2 Measures in the event of inadequate local control

Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession, he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection.

§70.3 All communicable diseases

A person who has a communicable disease in the communicable period shall not travel from one State or possession to another without a permit from the health officer of the State, possession, or locality of destination, if such permit is required under the law applicable to the place of destination. Stop-overs other than those necessary for transportation connections shall be considered as places of destination.

§70.4 Report of disease

The master of any vessel or person in charge of any conveyance engaged in interstate traffic, on which a case or suspected case of a communicable disease develops shall, as soon as practicable, notify the local health authority at the next port of call, station, or stop, and shall take such measures to prevent the spread of the disease as the local health authority directs.

§70.5 Certain communicable diseases; special requirements

The following provisions are applicable with respect to any person who is in the communicable period of cholera, plague, smallpox, typhus or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof:

(a) Requirements relating to travelers.

(1) No such person shall travel from one State or possession to another, or on a conveyance engaged in interstate traffic, without a written permit of the Surgeon General or his/her authorized representative.

(2) Application for a permit may be made directly to the Surgeon General or to his/her representative authorized to issue permits.

(3) Upon receipt of an application, the Surgeon General or his/her authorized representative shall, taking into consideration the risk of introduction, transmission, or spread of the disease from one State or possession to another, reject it, or issue a permit that may be conditioned upon compliance with such precautionary measures as he/she shall prescribe.

(4) A person to whom a permit has been issued shall retain it in his/her possession throughout the course of his/her authorized travel and comply with all conditions prescribed therein, including presentation of the permit to the operators of conveyances as required by its terms.

(b) Requirements relating to operation of conveyances.

(1) The operator of any conveyance engaged in interstate traffic shall not knowingly:

(i) Accept for transportation any person who fails to present a permit as required by paragraph (a) of this section; or

(ii) Transport any person in violation of conditions prescribed in his/her permit.

(2) Whenever a person subject to the provisions of this section is transported on a conveyance engaged in interstate traffic, the operator thereof shall take such measures to prevent the spread of the disease, including submission of the conveyance to inspection, disinfection and the like, as an officer of the Public Health Service designated by the Surgeon General for such purposes deems reasonably necessary and directs.

§70.6 Apprehension and detention of persons with specific diseases

Regulations prescribed in this part authorize the detention, isolation, quarantine, or conditional release of individuals, for the purpose of preventing the introduction, transmission, and spread of the communicable diseases listed in an Executive Order setting out a list of quarantinable communicable diseases, as provided under section 361(b) of the Public Health Service Act. Executive Order 13295, of April 4, 2003, contains the current revised list of quarantinable communicable diseases, and may be obtained at <http://www.cdc.gov>, or at http://www.archives.gov/federal_register. If this Order is amended, HHS will enforce that amended order immediately and update this reference.

§70.7 Responsibility with respect to minors, wards, and patients

A parent, guardian, physician, nurse, or other such person shall not transport, or procure or furnish transportation for any minor child or ward, patient or other such person who is in the communicable period of a communicable disease, except in accordance with provisions of this part.

§70.8 Members of military and naval forces

The provisions of §§70.3, 70.4, 70.5, 70.7, and this section shall not apply to members of the military or naval forces, and medical care or hospital beneficiaries of the Army, Navy, Veterans' Administration, or Public Health Service, when traveling under competent orders: Provided, That in the case of persons otherwise subject to the provisions of §70.5 the authority authorizing the travel requires precautions to prevent the possible transmission of infection to others during the travel period.

§ 70.9 Vaccination clinics

(a) The Director may establish vaccination clinics, through contract or otherwise, authorized to administer vaccines and/or other prophylaxis.

(b) A vaccination fee may be charged for individuals not enrolled in Medicare Part B to cover costs associated with administration of the vaccine and/or other prophylaxis. Such fee is to be collected at the time that the vaccine is administered. The vaccination fee, if imposed, is shown in the following table:

Vaccine	Effective dates	Amount
Fluarix	■ 1/25/05	● \$25.00

■ Continuing for one year.

● \$7.00 for the vaccine and \$18.00 for administration.