

**Department of Legislative Services**

Maryland General Assembly

2002 Session

**FISCAL NOTE**

**Revised**

Senate Bill 234

(The President, *et al.*) (Administration)

Education, Health, and Environmental Affairs

Environmental Matters

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**Catastrophic Health Emergencies - Powers of the Governor and the Secretary of Health and Mental Hygiene**

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This emergency Administration bill authorizes the Governor to proclaim a catastrophic health emergency if the Governor determines that exposure to a “deadly agent” presents an imminent threat of extensive loss of life or serious disability to persons in the State. Under such a proclamation, the Governor may order the Secretary of the Department of Health and Mental Hygiene (DHMH) or other official, to take certain actions. The bill requires DHMH to create a Catastrophic Health Emergency Disease Surveillance and Response Program and submit a report on any plans, procedures, or protocols developed as a result of this bill. The report must be updated every three years or when any provision of this bill is used to detect a catastrophic health emergency to the General Assembly by December 31, 2002.

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**Fiscal Summary**

**State Effect:** The bill would not create the need for expenditures above what would be required in a catastrophic health emergency under current law.

**Local Effect:** Potentially significant increase in expenditures depending on the scope and duration of a catastrophic health emergency but not as a direct result of this bill. Potential significant increase in revenues as local agencies seek reimbursement for expenditures from the State.

**Small Business Effect:** A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration’s assessment becomes available.

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## Analysis

### Bill Summary:

#### *Governor's Emergency Powers During Catastrophic Health Emergencies*

An emergency proclamation expires after 30 days unless the Governor renews it in 30-day increments. The Governor can rescind the proclamation whenever he/she determines the emergency is over. Once a catastrophic health emergency is declared, the Governor may order the Secretary of DHMH or other designated official to take possession of any item or material needed for a medical response. The Secretary or other official must work, to the extent feasible, with health care providers to designate and gain access to a facility needed to respond to the emergency. The Governor can order any health care provider to participate in disease surveillance, treatment, and suppression efforts or otherwise follow State directives.

The Governor also may order the Secretary or other official to control, restrict, or regulate the use, sale, dispensing, distribution, or transportation of any item or material needed to respond to the medical consequences of the emergency.

When it is medically necessary and reasonable to treat, prevent, or reduce the spread of disease or outbreak believed to have been caused by exposure to a deadly agent, the Governor may order the Secretary or other designated official to require individuals to submit to medical treatment or testing unless the medical treatment is likely to cause serious harm to the individual. The Secretary may establish places of treatment, isolation, and quarantine and require individuals to go to and remain in places of isolation and quarantine until the Secretary or other designated official determines the individuals no longer pose a substantial risk of transmitting the disease or condition to the public. The Governor may order the evacuation, closing, or decontamination of any facility, and may require individuals to remain indoors or refrain from congregating until further ordered if it is necessary and reasonable to save lives or prevent exposure to a deadly agent.

If a competent person over the age of 18 refuses vaccination, examination, treatment, or testing, the Secretary may require the individual to go to and remain in isolation or quarantine until that person no longer poses a substantial risk of transmitting the disease or condition to the public.

The Secretary or other designated official must issue a directive to an individual or group of individuals if they are required to go to and remain in isolation or quarantine. The order is effective for up to 30 days and may be continued for subsequent 30-day periods.

An individual or group of individuals isolated or quarantined may request a circuit court hearing to contest the isolation or quarantine. However, the request for a hearing may not stay or enjoin an isolation or quarantine directive. The hearing must be held within three days of receiving the request. The court can extend the hearing date if the Secretary or other designated official can show that extraordinary circumstances exist that justifies the extension. In determining whether to grant or deny a hearing date extension, the court must consider the individual's rights, public health, the severity of the catastrophic health emergency, and the availability of witnesses and evidence. The court must grant an individual's request for relief unless the court determines the isolation or quarantine directive is necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by exposure to a deadly agent.

A person who knowingly and willfully fails to comply with any order, requirement, or directive issued by the Governor, the Secretary, and any other designated official is guilty of a misdemeanor and on conviction is subject to a prison term of up to one year, a fine up to \$5,000, or both.

The Court of Appeals must develop emergency rules of procedure to facilitate adjudication of proceedings brought as a result of the isolation or quarantine directives.

A health care provider acting in good faith and in accordance with a catastrophic health care emergency proclamation is immune from civil or criminal liability related to the provider's actions taken under the proclamation, unless the provider acts with willful misconduct.

#### *Catastrophic Health Emergency Disease Surveillance and Response Program*

Under this program, the Secretary of DHMH may continuously evaluate and modify existing disease surveillance procedures to detect a catastrophic health emergency, investigate actual or potential exposures to a deadly agent, and treat, prevent, or reduce the spread of the disease or outbreak believed to have been caused by exposure to a deadly agent.

The Secretary may require health care facilities to develop and implement contingency plans to respond to a catastrophic health emergency. DHMH must publish protocols to help health care practitioners develop emergency plans and can require the practitioners to implement those plans if necessary.

The Secretary must develop a process to license, certify, or credential health care practitioners who may be needed to respond to a catastrophic health care emergency.

The Secretary may require a health care provider or other person to report information on the presence of an individual or group of individuals with specified illnesses or symptoms, diagnostic and laboratory findings on diseases caused by deadly agents, statistical or utilization trends on potential disease outbreaks, and information needed to trace exposed individuals. The Secretary also may access information in health care providers' possession and require or authorize a health care provider to disclose information to a federal, State, or local government agency or to another health care provider. Health care providers or other persons can be required to submit reports with information on the presence and use of deadly agents to DHMH. The Secretary may establish, maintain, and enforce evaluation, isolation, treatment, and quarantine orders for anyone actually or potentially exposed to a deadly agent. The Secretary also may order any law enforcement officer in the State to help execute or enforce any order the Secretary has issued.

In acquiring information, the Secretary must request and use nonidentifying information whenever possible and limit the use of confidential information to detect and investigate actual or potential exposures to a deadly agent. Any information the Secretary receives to maintain an effective disease surveillance system is confidential and may only be used or disclosed as provided under this bill. Health care providers or public agencies to whom the information is disclosed must maintain the confidentiality of the information.

It will be unlawful for an employer to discharge an employee who is under an order of isolation or quarantine because of the order.

A person who knowingly fails to comply with any order, regulation, or directive under this program is guilty of a misdemeanor and on conviction is subject to imprisonment of up to one year, or a fine up to \$3,000, or both. A health care facility that fails to comply with an order, regulation, or directive may be fined up to \$3,000 for each offense. If a health care practitioner fails to comply with an order, regulation, or directive, DHMH can request the appropriate licensing board to place the licensee or certificate holder on probation, suspend or revoke the license or certificate, or impose a fine of up to \$3,000 for each offense.

After an executive order proclaiming a catastrophic health emergency is rescinded, the State must make reasonable efforts to determine the costs associated with health care providers' compliance with the proclamation and include the providers in any application for State and federal financial aid as appropriate.

To implement this bill, the Secretary must work with the Maryland Emergency Management Agency, the Maryland Institute for Emergency Medical Services Systems, health care providers including the Association of Maryland Hospitals & Health Systems, and the Maryland State Medical Society, and other interested parties.

DHMH must adopt regulations to ensure that any individual subject to isolation or quarantine under this bill receives appropriate and adequate care. DHMH also must adopt regulations for health care facilities to follow in providing for the needs of pediatric patients.

If any provision or application of this bill is found invalid by a court, the invalidity does not affect other provisions or applications of this bill as long as they are effective without the invalid parts.

### **Current Law:**

#### *Governor's Powers*

The Governor may declare a catastrophe when three or more people are engaged in tumultuous conduct that tends to the commission of unlawful acts which disturb the public peace or which tend to precipitate the unlawful destruction or damage of public or private property.

In times of a crisis the Governor may declare a public emergency and designate the areas involved. After declaring an emergency, the Governor may promulgate reasonable orders, rules, and regulations to control traffic, the occupancy and use of buildings and vehicles, the movement of people or vehicles, places of amusement and assembly, and people on public streets and thoroughfares. The Governor may also establish curfews.

The Governor or designated representative has the use of all law enforcement bodies, fire companies, and rescue squads in the State once an emergency is declared, as long as it will not substantially interfere with the normal duties of those entities if they are not located within the emergency area. The Governor also can call out militia forces that would have the full power and responsibility for the emergency area.

A person violating these laws commits a misdemeanor and may receive a fine of up to \$1,000 or up to six months in jail, or both.

In provisions relating to the Maryland Emergency Management Agency, the Governor may declare a state of emergency if an emergency has developed or is pending. A state of emergency can be declared for 30 days and may be renewed by the Governor. The

General Assembly can terminate the state of emergency by passing a joint resolution at any time. After declaring a state of emergency, the Governor can take actions to protect the public health, welfare, or safety. The Governor can suspend provisions of any State laws or regulations, compel an evacuation, control entry into and exit from the emergency area, authorize the use of any private property, provide temporary housing, and authorize the removal of any debris.

#### *Department of Health and Mental Hygiene Secretary's Powers*

The Secretary may adopt rules and regulations necessary to prevent the introduction or spread of an infectious or contagious disease into or within the State by isolating or quarantining individuals. The Secretary also may obtain reports on communicable diseases in the State and determine the prevalence of each disease and devise means to control the diseases.

To prevent the spread of an infectious or contagious disease that endangers public health, a health officer who is the executive officer and secretary of a county board of health may have any part of a house disinfected if it was exposed to the disease and any article in the house disinfected or destroyed if the article was exposed to the disease. The county where the house is located is responsible for paying for the home disinfection and reasonably compensating the person who suffers damage as a result.

A health officer may have an infected individual moved to a suitable place if a physician certifies that the individual has an infectious disease that endangers the public health. The move is required if the individual is staying in a room occupied by more than one family, the person is on board a vessel, or the person otherwise does not have proper housing. The administrator of the facility the sick person is being moved to must consent to the move. The city or county where the infected individual is found must pay for the cost of moving the person. Anyone who refuses to move an infected person is guilty of a misdemeanor and on conviction is subject to a fine of up to \$200 or imprisonment up to six months.

**Background:** In an effort to prepare a legislative response to terrorism and related topics, the Governor, Speaker of the House, and President of the Senate appointed a joint task force to study the State's laws in this area and make recommendations for changes. The task force consists of three senators, three delegates, and four representatives from the Executive Branch. This is one of a package of bills recommended by the task force. Moreover, the Governor has listed homeland defense, including defenses against bioterrorism, as one of his budget priorities for fiscal 2003.

DHMH reports that the Secretary's existing public health powers are 50 to 100 years old and premised on natural disease outbreaks with limited clinical capabilities. DHMH believes the existing system can handle moderate, noncommunicable threats, such as the few congressional letters laced with anthrax spores that were sent last year after September 11, but isn't fully prepared to handle large-scale communicable threats, such as plague and smallpox. DHMH states that existing law doesn't address mass casualty or bioterrorism events, preparedness, disaster planning, mandatory training, or stockpiling of medication and equipment.

The Maryland Emergency Management Agency, in cooperation with DHMH and the Maryland Institute for Emergency Medical Services System have worked together since 1998 to prepare for a coordinated response in the event of a terrorist attack with a weapon of mass destruction (WMD) such as explosives or chemical or biological agents. The three agencies have prepared the *Maryland Health and Medical WMD Response Plan*. This plan analyzes Maryland's current capacity to respond to a terrorist incident, outlines best practices for the health and medical community, and specifically describes the responsibilities of individual agencies that are essential to prepare for and respond adequately to a terrorist threat. In addition to these planning efforts, the Maryland Department of the Environment has worked closely with the State's drinking water suppliers to reevaluate and strengthen security and contingency planning in the event of a terrorist attack. The Maryland Hospital Association is also devoting significant resources to enhance its emergency preparedness. Although such plans are in place, concerns still exist regarding the ability of various State agencies to communicate with each other and the capacity of Maryland hospitals to handle a large scale epidemic.

**State Fiscal Effect:** Although the bill increases and specifies the authority of the Governor and the Secretary to respond to a catastrophic health emergency, the bill does not create the need for expenditures above what would be required to respond to such an emergency under existing law. In any event, general fund expenditures could increase significantly depending on the scope and duration of any catastrophic health emergency. DHMH used existing staff to respond to the September 11, 2001 terrorist attacks and gave compensatory time to employees who worked overtime. As a result, there was not a significant fiscal impact on the State. However, DHMH advises that in a sustained emergency, the department would not be able to rely on employees working extensive amounts of overtime and may be required to temporarily hire additional staff to meet State needs.

There are State and federal funds that may be tapped to respond to and prepare for a catastrophic health emergency. The State has \$1.7 million in the Catastrophic Event Fund that covers expenses as a result of a natural disaster or catastrophic situation. Total federal bioterrorism preparedness spending will be \$2.9 billion in federal fiscal 2002.

The U.S. Department of Health and Human Services (HHS) announced January 31, 2002 that it has allocated \$1.1 billion to states and cities to strengthen their capacity to respond to bioterrorism and other public health emergencies. Of that amount, Maryland's share is \$18,861,513 and could be disbursed to the State as early as fiscal 2002. The State may spend \$16,593,978 on bioterrorism, infectious diseases, and other public health emergency preparedness activities. The remaining \$2,267,535 may be used to create regional hospital plans to respond to a bioterrorist attack. In addition, the city of Chesapeake, Maryland will receive \$400,000 from the HHS Office of Emergency Preparedness to support the Metropolitan Medical Response System. The funds will be used to improve the jurisdiction's ability to respond to a possible release of chemical or biological disease agents and to improve the local response to any event involving mass casualties.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 296 (The Speaker, *et al.*) (Administration) – Environmental Matters.

**Information Source(s):** Montgomery County, Prince George's County, Dorchester County, Department of State Police, Department of Health and Mental Hygiene, Maryland Emergency Management Agency, Office of the Attorney General, U.S. Department of Health and Human Services, Department of Legislative Services

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