

**EMERGENCY HEALTH RESPONSE
AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Marda Dillree

This act amends professional licensing provisions, the powers and duties of local health departments, and provisions related to immunity from liability for governmental entities and certain professionals. The act establishes exceptions to certain licensing standards when a national, state, or local emergency is declared. The act amends certain prescription drug dispensing rules when emergencies are declared. The act authorizes local departments of health to investigate suspected bioterrorism and diseases and to provide public health assistance in a declared emergency. The act provides limited immunity from civil damages for governmental entities and certain health professionals responding to a declared emergency. This act has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

26A-1-114, as last amended by Chapter 249, Laws of Utah 2002

58-1-307, as last amended by Chapter 63, Laws of Utah 2001

58-13-2, as last amended by Chapter 160, Laws of Utah 2000

58-17a-620, as enacted by Chapter 247, Laws of Utah 1996

63-30-3, as last amended by Chapters 15 and 248, Laws of Utah 1991

78-11-22, as last amended by Chapter 211, Laws of Utah 1987

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26A-1-114** is amended to read:

26A-1-114. Powers and duties of departments.

(1) A local health department may:

(a) subject to the provisions in Section 26A-1-108, enforce state laws, local ordinances, department rules, and local health department standards and regulations relating to public health and

sanitation, including the plumbing code adopted by the Division of Occupational and Professional Licensing under Section 58-56-4 and under Title 26, Chapter 15a, Food Safety Manager Certification Act, in all incorporated and unincorporated areas served by the local health department;

(b) establish, maintain, and enforce isolation and quarantine, and exercise physical control over property and over individuals as the local health department finds necessary for the protection of the public health;

(c) establish and maintain medical, environmental, occupational, and other laboratory services considered necessary or proper for the protection of the public health;

(d) establish and operate reasonable health programs or measures not in conflict with state law that:

(i) are necessary or desirable for the promotion or protection of the public health and the control of disease; or

(ii) may be necessary to ameliorate the major risk factors associated with the major causes of injury, sickness, death, and disability in the state;

(e) close theaters, schools, and other public places and prohibit gatherings of people when necessary to protect the public health;

(f) abate nuisances or eliminate sources of filth and infectious and communicable diseases affecting the public health and bill the owner or other person in charge of the premises upon which this nuisance occurs for the cost of abatement;

(g) make necessary sanitary and health investigations and inspections on its own initiative or in cooperation with the Department of Health or Environmental Quality, or both, as to any matters affecting the public health;

(h) pursuant to county ordinance or interlocal agreement:

(i) establish and collect appropriate fees for the performance of services and operation of authorized or required programs and duties;

(ii) accept, use, and administer all federal, state, or private donations or grants of funds,

property, services, or materials for public health purposes; and

(iii) make agreements not in conflict with state law that are conditional to receiving a donation or grant;

(i) prepare, publish, and disseminate information necessary to inform and advise the public concerning:

(i) the health and wellness of the population, specific hazards, and risk factors that may adversely affect the health and wellness of the population; and

(ii) specific activities individuals and institutions can engage in to promote and protect the health

and wellness of the population;

(j) investigate the causes of morbidity and mortality;

(k) issue notices and orders necessary to carry out this part;

(l) conduct studies to identify injury problems, establish injury control systems, develop standards for the correction and prevention of future occurrences, and provide public information and instruction to special high risk groups;

(m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within the jurisdiction of the boards; [~~and~~]

(n) cooperate with the state health department, the Department of Corrections, the Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any victims of a sexual offense[-];

(o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and

(p) provide public health assistance in response to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) The local health department shall:

(a) establish programs or measures to promote and protect the health and general wellness of

the people within the boundaries of the local health department;

(b) investigate infectious and other diseases of public health importance and implement measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health which may include involuntary testing of convicted sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims of sexual offenses for HIV infection pursuant to Section 76-5-503;

(c) cooperate with the department in matters pertaining to the public health and in the administration of state health laws; and

(d) coordinate implementation of environmental programs to maximize efficient use of resources by developing with the Department of Environmental Quality a Comprehensive Environmental Service Delivery Plan that:

(i) recognizes that the Department of Environmental Quality and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan,

and requested by the local health department; and

(iv) is reviewed and updated annually.

(3) The local health department has the following duties regarding public and private schools within its boundaries:

(a) enforce all ordinances, standards, and regulations pertaining to the public health of persons attending public and private schools;

(b) exclude from school attendance any person, including teachers, who is suffering from any communicable or infectious disease, whether acute or chronic, if the person is likely to convey the

disease to those in attendance; and

(c) (i) make regular inspections of the health-related condition of all school buildings and premises;

(ii) report the inspections on forms furnished by the department to those responsible for the condition and provide instructions for correction of any conditions that impair or endanger the health or life of those attending the schools; and

(iii) provide a copy of the report to the department at the time the report is made.

(4) If those responsible for the health-related condition of the school buildings and premises do not carry out any instructions for corrections provided in a report in Subsection (3)(c), the local health board shall cause the conditions to be corrected at the expense of the persons responsible.

(5) The local health department may exercise incidental authority as necessary to carry out the provisions and purposes of this part.

Section 2. Section **58-1-307** is amended to read:

58-1-307. Exemptions from licensure.

(1) Except as otherwise provided by statute or rule, the following persons may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

(a) a person serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the person holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;

(b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;

(c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified persons;

(d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;

(e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;

(f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;

(g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;

(h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;

(i) an individual licensed and in good standing in another state, who is in this state:

(i) temporarily, under the invitation and control of a sponsoring entity;

(ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and

(iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods. The requirements of Section 63A-10-105 do not

apply to exemptions authorized by the division pursuant to this Subsection (1)(i);

(j) an individual who:

(i) is certified as an athletic trainer by the National Athletic Trainers Association Board of Certification or another entity approved by the division;

(ii) is employed or officially associated with an educational institution, a professional sports organization, or a bona fide amateur sports organization; and

(iii) only provides athletic training services:

(A) to athletes of the educational institution or sports organization to which the individual is employed or officially associated;

(B) at an official athletic training, practice, or competition site; and

(C) that are within the scope of the individual's certification; and

(k) a law enforcement officer, as defined under Section 53-13-103, who:

(i) is operating a voice stress analyzer in the course of the officer's full-time employment with a federal, state, or local law enforcement agency;

(ii) has completed the manufacturer's training course and is certified by the manufacturer to operate that voice stress analyzer; and

(iii) is operating the voice stress analyzer in accordance with Section 58-64-601, regarding deception detection instruments.

(2) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice. Violation of any limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

(3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

(4) Upon the declaration of a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities, the division in collaboration with the board may:

(a) suspend the requirements for permanent or temporary licensure of persons who are licensed in another state. Persons exempt under this Subsection (4)(a) shall be exempt from licensure for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state[-];

(b) modify, under the circumstances described in Subsections (4) and (5), the scope of practice restrictions under this title for persons who are licensed under this title as:

(i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;

(ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure Compact;

(iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;

(iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17a, Pharmacy Practice Act;

(v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act; and

(vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist Practice Act;

(c) suspend the requirements for licensure under this title and modify the scope of practice in the circumstances described in Subsections (4) and (5) for medical services personnel or paramedics required to be certified under Section 26-8a-302; and

(d) suspend requirements in Subsections 58-17a-620(3) through (6) which require certain prescriptive procedures.

(5) Persons exempt under Subsection (4)(c) and persons operating under modified scope of practice provisions under Subsection (4)(b):

(a) shall be exempt from licensure or subject to modified scope of practice for the duration of

the emergency;

(b) must be engaged in the distribution of medicines or medical devises in response to the emergency or declaration; and

(c) must be employed by or volunteering for a local or state department of health.

Section 3. Section **58-13-2** is amended to read:

58-13-2. Emergency care rendered by licensee.

(1) A person licensed under Title 58, Occupations and Professions, to practice as any of the following health care professionals, who is under no legal duty to respond, and who in good faith renders emergency care at the scene of an emergency gratuitously and in good faith, is not liable for any

civil damages as a result of any acts or omissions by the person in rendering the emergency care:

~~[(1)]~~ (a) osteopathic physician;

~~[(2)]~~ (b) physician and surgeon;

~~[(3)]~~ naturopath;

(c) naturopathic physician;

~~[(4)]~~ (d) dentist or dental hygienist;

~~[(5)]~~ (e) chiropractic physician;

~~[(6)]~~ (f) physician assistant;

~~[(7)]~~ (g) optometrist; [or]

~~[(8)]~~ (h) nurse licensed under Section 58-31b-301[;] or 58-31c-102;

(i) podiatrist;

(j) certified nurse midwife;

(k) respiratory therapist; or

(l) pharmacist, pharmacy technician, and pharmacy intern.

(2) (a) This Subsection (2) applies to health care professionals:

(i) described in Subsection (1);

(ii) who are under no legal duty to respond to the circumstances described in Subsection

(2)(b):

(iii) who are acting within the scope of the health care professional's license, or within the scope of practice as modified under Subsection 58-1-307(4); and

(iv) who are acting in good faith without compensation or remuneration as defined in Subsection 58-13-3(2).

(b) A health care professional described in Subsection (2)(a) is not liable for any civil damages as a result of any acts or omissions by the health care professional in rendering care as a result of:

(i) implementation of measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(ii) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and

(iii) responding to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

(3) The immunity in Subsection (2) is in addition to any immunity or protection in state or federal law that may apply.

Section 4. Section **58-17a-620** is amended to read:

58-17a-620. Prescriptions issued within the public health system.

(1) As used in this section:

(a) "Department of Health" means the state Department of Health created in Section 26-1-4.

(b) "Health department" means either the Department of Health or a local health department.

(c) "Local health departments" means the local health departments created in Title 26A, Chapter 1, Local Health Departments.

(2) A health department may implement the prescription, distribution, dispensing, compounding, and administering procedure under Subsection (3) for prescription drugs, other than

controlled substances, for use in:

(a) clinics providing:

~~[(a)]~~ (i) sexually transmitted disease treatment;

~~[(b)]~~ (ii) fluoride treatment; ~~[(or)]~~

(iii) tuberculosis or latent tuberculosis treatment;

~~[(c)]~~ (iv) travel immunization~~[-]~~ or medication; or

(v) immunization; or

(b) responses to bioterrorism, epidemic or pandemic disease, or a public health emergency as defined in Section 26-23b-102, a national, state, or local emergency, or a declaration by the President of the United States or other federal official requesting public health-related activities.

(3) The following prescription, distribution, dispensing, compounding, and administering procedure shall be carried out in accordance with the requirements of Subsection (4) and may be used only in the clinics listed under Subsection (2)(a) or in response to emergencies or declarations under Subsection (2)(b):

(a) a physician writes and signs a prescription for prescription drugs, other than controlled substances, without the name and address of the patient and without the date the prescription is provided to the patient; ~~[and]~~

(b) the physician authorizes a ~~[registered nurse]~~ person licensed under Chapter 31b, Nurse Practice Act, Chapter 31c, Nurse Licensure Compact, or Chapter 70, Physician Assistant Act, employed by the health department to complete the prescription written under Subsection (3)(a) by inserting the patient's name and address, and the date the prescription is provided to the patient, in accordance with the physician's standing written orders and a written health department protocol approved by the physician and the medical director of the state Department of Health~~[-]~~; and

(c) a person licensed under Chapter 31b, Nurse Practice Act, Chapter 31c, Nurse Licensure Compact, or Chapter 70, Physician Assistant Act, employed by a health department personally administers the drugs or medicines other than controlled substances pursuant to a prescription issued in

compliance with this section in order to supply the immediate needs of the patient.

(4) When allowing prescriptions to be written, or prescription drugs other than controlled substances to be distributed, dispensed, compounded, or administered, under Subsection (3), the health department shall employ a physician who:

(a) assumes specific responsibility for all prescriptions issued in his name under the procedure in Subsection (3) by the health department; and

(b) enters into a written signed agreement with the health department, which agreement is approved by the division and states:

(i) the terms and conditions under which the physician will prepare and sign prescriptions that do not include the name and address of the patient and the date the prescription is provided to the patient;

(ii) the methods which will be used to ensure the signed prescriptions are secure and not available for unauthorized use;

(iii) the minimum qualifications and training of a ~~[registered nurse]~~ a person described in Subsection (3)(b) authorized by the physician and department to complete and provide prescriptions to a patient;

(iv) under what conditions prescriptions completed by an authorized ~~[registered nurse]~~ person will be provided to a patient in accordance with standing orders and written protocols, and the specific prescription drugs for which prescriptions may be written;

(v) the manner in which the physician will audit and review the records of patients receiving prescriptions; and

(vi) the manner in which records of prescriptions issued will be maintained for audit by the physician and division.

(5) The health department shall file and maintain with the division a current copy of all agreements signed by physicians under Subsection (4).

(6) (a) All prescription forms to be used by a physician and health department in accordance

with this section shall be serially numbered according to a numbering system assigned to that health department by the division.

(b) All prescriptions issued shall contain all information required under this chapter and rules adopted under this chapter.

Section 5. Section **63-30-3** is amended to read:

63-30-3. Immunity of governmental entities from suit.

(1) Except as may be otherwise provided in this chapter, all governmental entities are immune from suit for any injury which results from the exercise of a governmental function, governmentally-owned hospital, nursing home, or other governmental health care facility, and from an approved medical, nursing, or other professional health care clinical training program conducted in either public or private facilities.

(2) Subsections (2)(a) through (c) are unique or essential core governmental functions and, notwithstanding the waiver of immunity provisions of Section 63-30-10, governmental entities, political subdivisions, and their officers and employees are immune from suit for any injury or damage resulting from the implementation of or the failure to:

(a) implement measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(b) investigate and control suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and

(c) respond to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

~~[(2)]~~ (3) (a) For the purposes of this chapter only, the following state medical programs and services performed at a state-owned university hospital are unique or essential to the core of governmental activity in this state and are considered to be governmental functions:

(i) care of a patient referred by another hospital or physician because of the high risk nature of the patient's medical condition;

(ii) high risk care or procedures available in Utah only at a state-owned university hospital or provided in Utah only by physicians employed at a state-owned university acting in the scope of their employment;

(iii) care of patients who cannot receive appropriate medical care or treatment at another medical facility in Utah; and

(iv) any other service or procedure performed at a state-owned university hospital or by physicians employed at a state-owned university acting in the scope of their employment that a court finds is unique or essential to the core of governmental activity in this state.

(b) If any claim under this Subsection (3) exceeds the limits established in Section 63-30-34, the claimant may submit the excess claim to the Board of Examiners and the Legislature under Title 63, Chapter 6.

~~[(3)]~~ (4) The management of flood waters and other natural disasters and the construction, repair, and operation of flood and storm systems by governmental entities are considered to be governmental functions, and governmental entities and their officers and employees are immune from suit for any injury or damage resulting from those activities.

~~[(4)]~~ (5) Officers and employees of a Children's Justice Center are immune from suit for any injury which results from their joint intergovernmental functions at a center created in Title 62A, Chapter 4a, Child and Family Services.

Section 6. Section **78-11-22** is amended to read:

78-11-22. Good Samaritan Act.

(1) A person who renders emergency care at or near the scene of, or during an emergency, gratuitously and in good faith, is not liable for any civil damages or penalties as a result of any act or omission by the person rendering the emergency care, unless the person is grossly negligent or caused the emergency. As used in this section, "emergency" means an unexpected occurrence involving injury,

threat of injury, or illness to a person or the public, including motor vehicle accidents, disasters, actual or threatened discharges, removal, or disposal of hazardous materials, and other accidents or events of a similar nature. "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the effects of an emergency.

(2) A person who gratuitously, and in good faith, assists governmental agencies or political subdivisions in the activities described in Subsections (2)(a) through (c) is not liable for any civil damages or penalties as a result of any act or omission unless the person rendering assistance is grossly negligent:

(a) implementation of measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health, or necessary to protect the public health as

set out in Title 26A, Chapter 1, Local Health Departments;

(b) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and

(c) responding to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

(3) The immunity in Subsection (2) is in addition to any immunity or protection in state or federal law that may apply.

Section 7. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article

VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.