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13.0301 Short title.

This chapter shall be known as, and may be cited as, the American Samoa Emergency Health Powers Act.

13.0302 Purposes.

The purpose of this act is to:

- (a) Establish the parameters and authority of the Department of Health and of the director to develop and implement a comprehensive response to events or occurrences of potential or actual public health emergencies through formal declarations and triggering of special public health powers during an event or occurrence of a public health emergency;
- (b) Promote and build strong relationships between the department and federal and ASG agencies, public and private sector partners, volunteers, and any other person or entity regarding a response to a potential or actual public health emergency;
- (c) Promote cooperation and formal collaborative agreements between the department and federal and ASG agencies, public and private sector partners, volunteers, and any other person or entity regarding a response to a potential or actual public health emergency;
- (d) Address privacy and security issues arising from any response of the Department to events or occurrences of potential or actual public health emergencies.

13.0303 Definitions.

As used in this act, terms shall have the same meaning as stated in the American Samoa Public Health Act unless defined below:

- (1) "Act" means the American Samoa Emergency Health Powers Act.
- (2) "Bioterrorism" means the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism.
- (3) "Contaminated material" means wastes or other materials exposed to or tainted by chemical, radiological, or biological substances or agents.
- (4) "Department" means the Department of Health.
- (5) "Director" means the director of the Department of Health.
- (6) "Event or occurrence" means an incident, situation, or episode.
- (7) "Health care facility" means any institution, building, or agency or portion thereof, whether public or private (for-profit or nonprofit) that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual in American Samoa.
- (8) "Public health emergency" means the declaration by the Governor of a crisis or emergency situation requiring a response to an event or occurrence or imminent threat of an illness or health condition that:
 - (A) Is believed to be caused by any of the following:
 - (i) Bioterrorism;
 - (ii) The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; or
 - (iii) A natural disaster, a chemical attack or accidental release, or a nuclear attack or accident; and
 - (B) Poses a high probability of any of the following harms:
 - (i) A large number of deaths in the affected population;

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(ii) A large number of serious or long-term disabilities in the affected population; or (iii) Exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

(9) "Public health emergency services and functions" means services and functions provided in response to an event or occurrence of a public health emergency.

(10) "Public health importance" means effecting, affecting or concerning and adversely affecting the health of the public.

(11) "Response" means the department's reaction and reply to attempt to address, ameliorate, lessen, and protect the public upon the event or occurrence of a public health emergency.

(12) "Response plan" means the strategy and design of the department to address, ameliorate, lessen, and protect the public upon the event or occurrence of a public health emergency.

(13) "Threat", "threaten", "threatening", "threatened" means the existence of a potential or imminent danger, harm, risk or damage.

(14) "Threat to public health" means an event or occurrence of such significance, as determined by the director, that the general health or well-being of the people of the Territory is threatened.

13.0304 Mission statement.

(a) It is the policy of American Samoa that in the event or occurrence of a public health emergency, that the public health be protected and promoted to the greatest extent possible through the public health system while respecting individual rights to dignity, health information privacy, nondiscrimination, due process, and other legally-protected interests.

(b) The mission of the department, in regard to this act, is to provide leadership, and to protect and promote the public's health in any public health emergency by:

(1) Developing a response plan to respond to an event or occurrence of a public health emergency;

(2) Providing or assuring the provision of public health emergency services and functions that are culturally and linguistically appropriate for the Territory;

(3) Encouraging collaboration among public and private sector partners to support the purpose of this act; and

(4) Seeking adequate funding and other sources to provide essential emergency public health services and functions, or accomplish public health goals through public or private sources. This act shall not be construed to require an individual or agency within the public health system to provide specific health services, or to mandate the Territory's and local public health agencies to implement unfunded programs.

13.0305 Director and department powers.

To carry out the purpose of this act, the director and the department are authorized, in addition to exercising any and all powers provided under the American Samoa Public Health Act, to provide or implement upon the declaration of a public health emergency, a response to an event or occurrence of a public health emergency, including services or functions to:

(a) Utilize a broad range of flexible powers to protect and promote the public's health during an event or occurrence of a public health emergency including compulsory powers as defined in the act;

(b) Conduct, fund, provide, or endorse response standards for the events or occurrences of public health emergencies;

(c) Develop and provide certification, credentialing, or effective training for members of the department, ASG agencies, public and private sector partners and volunteers;

(d) Develop, adopt, and implement public health emergency plans through administrative regulations, formal policies, or collaborative recommendations that guide or support individual and community response efforts;

(e) Establish formal or informal relationships with federal agencies, ASG agencies, public or private sector partners, volunteers, and any other person or entity within and without the Territory, to support and aid in the response to an event or occurrence of a public health emergency;

(f) Enforce existing laws and administrative regulations (including emergency regulations), and propose new laws, amendments to existing laws or administrative regulations that may serve as tools to protect the public's health;

(g) Identify, assess, prevent, and ameliorate conditions of public health emergencies through mandatory reporting observations, epidemiological tracking, program evaluation and monitoring; testing and screening programs, treatment, abatement of public health nuisances, administrative inspections, or other techniques;

(h) Promote or ensure the availability and accessibility of resources to respond to an event or occurrence of a public health emergency;

(i) Systematically and regularly review and recommend modifications to the response plan and other systems needed or developed to protect the public's health during or after an event or occurrence of a

public health emergency;

(j) Request warrants for law enforcement assistance required for the operation or enforcement of any provision of this act;

(k) Request assistance from the American Samoa Government Attorney General, law enforcement officials, or any other American Samoa Government official in the operation or enforcement of any provision of this act.

13.0306 Response and control of event or occurrence of a public health emergency.

(a) The director and department are authorized to use the powers and provisions set forth in this act to respond to, control, or ameliorate conditions arising from events or occurrences of public health emergencies in addition to any and all powers and authority provided to the director and department under any other law or regulation of the Territory.

(b) In carrying out these authorities or powers, the department and director are guided by the following principles:

(1) The exercise of any authority or power under this act shall be to further or support improving, controlling, correcting, or responding to protect the public's health during or after any event or occurrence of a public health emergency.

(2) Whenever possible, the department and director shall exercise its authorities or powers through procedures, practices, or programs that are based on modern, scientifically-sound principles and evidence.

(3) The department and director shall strive to design and implement procedures in the response plans that are well-targeted to accomplishing essential public health emergency services and functions. The department and director should employ compulsory powers only to avert a significant risk and should avoid using compulsory power in a manner that is over-broad (applying to more individuals than is necessary for an effective response).

(4) The department and director should employ the least restrictive alternative in the exercise of its authorities or powers, especially compulsory powers. This means that where the agency may exercise one or more of its authorities or powers to respond to a public health emergency, the department and director shall, to the extent possible, employ the policy or practice that least infringes on the rights or interests of individuals. Employing the least restrictive alternative does not require the department or the director to adopt policies or programs that are less effective in protecting the public's health or safety.

(5) The department and director shall not discriminate in an unlawful manner against individuals on the basis of their race, creed, color, ethnicity, nationality, religious beliefs, sex, sexual orientation, age or disability status.

(6) The department and director shall respect the dignity of each individual under their jurisdiction, regardless of the individual's nationality, citizenship, or residency status.

13.0307 Declaring a public health emergency.

(a) A public health emergency may be declared by the Governor, at the director's recommendation, upon the event or occurrence of a public health emergency, or the imminent threat of a public health emergency. Prior to such a declaration, the Governor and/or Director, may consult with the Territorial Office of Homeland Security, ASG agencies, federal agencies and may consult with any additional public health or other experts as needed.

(b) A public health emergency shall be declared in a written statement that specifies:

(1) The nature of the public health emergency or the imminent threat of a public health emergency;

(2) The geographic area(s) subject to the declaration;

(3) The conditions that have brought about the public health emergency or imminent threat of a public health emergency; and

(4) The duration of the public health emergency, if less than thirty (30) days.

(c) The declaration of a public health emergency shall activate the response of the department. Such declaration authorizes the deployment and use of any forces that the response requires and the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or available for the response.

(d) The Governor may terminate the state of public health emergency any time after the date of original declaration upon finding that the circumstances or conditions that caused the emergency no longer exist. In the event that the Governor terminates any public health emergency declared, neither the director nor the department shall be liable for the death of, or any injury to individuals, or damage to property, as a result of the director or department's inability to exercise necessary emergency authority or powers granted by the act.

13.0308 Roles and responsibilities.

The department must perform public emergency health services and functions. The department may actively collaborate with federal agencies, ASG agencies, public and private sector partners, volunteers, and any other person or entity within or without the Territory to improve these services and functions.

13.0309 Individual rights.

All persons within the department shall seek to accomplish the purposes and mission of this act while respecting individual rights including:

- (1) Respect for the dignity of each individual;
 - (2) Protection of health information privacy for each individual consistent with the purpose of this act and any other applicable federal or Territory laws;
 - (3) Provision of adequate due process as required by this act or other applicable federal or Territory laws; and
 - (4) Avoidance of explicit or implicit discrimination in an unlawful manner of individuals on the basis of their race, ethnicity, nationality, religious beliefs, sex, sexual orientation, or disability status.
 - (5) The director shall adopt regulations addressing and governing the protection of individuals during the department's response to any event or occurrence of a public health emergency.
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13.0310 Response plan.

A response plan is needed to achieve the purpose of this act and provide public health emergency services and functions.

(a) The director shall develop a public health emergency plan and deliver a copy of the plan to the Governor. The response plan should address the following goals:

- (1) Identify and determine the existence of, potential, threat of, or imminent danger of an event or occurrence of a public health emergency;
- (2) Develop and/or support an information infrastructure aiding and supporting a full and adequate response to events or occurrences of public health emergencies;
- (3) Develop and provide for certification, credentialing, or effective training for members of the department, ASG agencies, and public and private sector partners and volunteers involved in a response;
- (4) Provide for participation in voluntary advanced registration and accreditation programs; and
- (5) Comprehensively plan and set priorities for the performance of essential public health emergency services and functions.

(b) To fulfill these and other goals underlying the development of an infrastructure to respond to public health emergencies, the department shall consult, adopt and implement federal and Territory guidelines, initiatives, programs, and recommendations relating to improvements in public health infrastructure provided they are consistent with accomplishing the purpose of this act and respecting the unique territorial circumstances and resources.

(c) The director shall promulgate rules and regulations specifying the scope and content of the response plan and ensure that the plan is regularly tested and revised as needed.

(d) Each response plan shall be reviewed and updated annually, if needed.

(e) The director shall provide a copy of the response plan to the Governor and the Fono, and shall make available a copy to appropriate federal agencies, ASG agencies, public and private sector partners and volunteers.

13.0311 Department training, certification and credentialing.

(a) The director and department may identify and encourage public and private leaders in the Territory to work through the department to develop, administer, and fulfill the requirements of this act, and ensure the provision of public health emergency services and functions.

(b) The director may adopt and administer training certification or credentialing programs for department personnel, ASG agencies, public and private sector partners and volunteers. These programs should be designed to develop knowledge, skills, and abilities in relevant and contemporary areas addressing the response and may be based on:

- (1) Basic, core, or technical competencies (and corresponding curriculum) for emergency preparedness and response; or
 - (2) Professional codes for public health professionals.
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13.0312 Department agreements.

(a) The department may seek to establish working relationships and agreements with federal agencies, ASG agencies, public and private sector partners and volunteers, to coordinate, assist or engaged in the providing of a response to a public health emergency.

(b) The director may form one or more agreements with any other United States Pacific territories or their agencies to coordinate the provision of a response to a public health emergency.

13.0313 Data collection.

(a) The department is authorized to collect, analyze, and maintain databases of identifiable or non-identifiable information related to:

- (1) Risk factors identified for specific conditions of public health emergencies;
- (2) Morbidity and mortality rates for events or occurrences of public health emergencies;
- (3) Community indicators relevant to conditions of public health emergencies; and
- (4) Any other data needed to accomplish or further the mission or goals of the Department and of this act.

(b) The department is authorized to obtain information from federal agencies, ASG agencies, health care providers, public and private sector partners, volunteers, and private and public organizations related to or involving potential, possible or actual public health emergencies.

(1) The department may use information available from other governmental and private sources, reports of hospital discharge data, information included in death certificates, other vital statistics, environmental data, and public information.

(2) The department may request information from or inspect health care records maintained by other ASG agencies that identify patients or characteristics of patients with reportable diseases or other conditions of public health emergencies.

13.0314 Reporting to detect and track a public health emergency.

A health care provider, hospital, coroner, medical examiner, and veterinarian shall report to the department all cases of individuals or animals who harbor, or are suspected of harboring, any condition of possible public health importance that may be potential causes or indicators of a public health emergency.

13.0315 Epidemiologic investigation.

The department may investigate conditions of public health emergencies through:

- (1) Methods of epidemiological investigation including identifying individuals who have been or may have been exposed to, affected by or infected by an event or occurrence of a public health emergency; and
 - (2) Interviewing and testing those individuals, and examining facilities or materials that may pose a threat to the public's health as the result of an occurrence of a public health emergency.
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13.0316 Testing, examination and screening.

The department may administer testing, examination, and screening procedures or programs to identify conditions of actual, possible and imminent public health emergencies.

13.0317 Vaccinations.

The director or department may require vaccination of any individual within their jurisdictions to prevent the introduction or spread of an infectious disease or other threat to public health during a declared public health emergency.

13.0318 Collection of laboratory specimens--performance of tests.

During a declared public health emergency, the department may collect, or cause to be collected, specimens or environmental samples and perform tests on living and deceased individuals, environmental samples, and any animal (living or deceased), and acquire any previously collected specimens, samples, or test results that are reasonable and necessary to respond to the public health emergency.

13.0319 Additional emergency powers.

During a declared public health emergency, the director and department are authorized:

- (1) To close, direct, and compel the evacuation of, or decontaminate or cause to be decontaminated any facility of which it has reasonable cause to believe that it may have been exposed to, subjected to, or the cause of a public health emergency.
 - (2) To require any local hospital or any health care facility to provide services or the use of its facility if such services or use are reasonable and necessary to respond to an event or occurrence of a public health emergency.
 - (3) To decontaminate or cause to be decontaminated, or destroy, any material of which it has reasonable cause to believe that it may have been exposed to, subjected to, or the cause of a public health emergency.
 - (4) To inspect, control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of food, fuel, clothing and other commodities if, and only if, such items have been exposed to, subjected to, or the cause of a public health emergency, and the item poses a threat to public health.
 - (5) During an event or occurrence of a public health emergency, the department is authorized to control or limit ingress and egress to and from any stricken or threatened public area, the movement of individuals within the area, and the occupancy of premises therein, if such action is reasonable and necessary to respond to an event or occurrence of a public health emergency.
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13.0320 Procurement.

- (a) During a declared public health emergency, ASG procurement is authorized to make emergency procurement of any and all items, services and products of any nature as requested by the director, or his designee, to be used to respond to the public health emergency.
 - (b) All other expenditures or contracts entered into pursuant to the Act, if involving the expenditure or potential expenditure of funds, shall be in accordance with the applicable laws and regulations under ASG procurement.
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13.0321 Property--Civil proceedings.

To the extent practicable and consistent with the appropriate response to an event or occurrence of a public health emergency, prior to the destruction of any property under this act, the department shall institute appropriate civil proceedings concerning the property to be destroyed in accordance with the Territory laws and rules of Court. Any property acquired by the agency through such proceedings shall, after entry of the decree, be disposed of by destruction as the Court may direct.

13.0322 Private liability.

- (a) During a declared public health emergency, any non-governmental person and employees and agents of such person under the direction of the director or his duly appointed agent, or who renders assistance or advice at the request of the director or his duly appointed agent shall not be civilly liable for causing the death of, or injury to, any individual or damage to any property except in the event of gross negligence or willful misconduct.
 - (b) The immunities provided in this section shall not apply to any person whose act or omission caused in whole or part the event or occurrence of a public health emergency and who would otherwise be liable for the public health emergency.
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13.0323 Criminal penalties.

- (a) Any person who willfully violates or obstructs the execution of any of this act's provisions, regulation, or rule, or fails to follow any Court order under this act, for which no other penalty is prescribed, shall be guilty of a class A misdemeanor.
 - (b) Any action under this section is barred unless the action is commenced within two years after the cause of action accrues.
 - (c) Each violation of this act is a separate and actionable offense.
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13.0324 Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstances is held invalid in a federal or Territory court, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

13.0325 Conflicting laws.

- (a) This act does not restrict any person from complying with federal law or regulations.
- (b) In the event of a conflict between this act and other Territory laws or regulations, the provisions of this act and its regulations shall apply.
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13.0326 Adoption, amendment and revisions of regulations.

- (a) The director shall adopt regulations, policies or procedures addressing and governing the response, notification and explanation to the public, coordination, identification, enforcement and termination of a declaration of a public health emergency and all acts or actions needed to appropriately and adequately respond to an event or occurrence of a public health emergency.
- (b) These regulations, policies and procedures shall take into account and provide for the following:
- (1) Needs for the protection of the public's health during a public health emergency.
 - (2) Needs, if any, for protecting, treating or quarantining personnel or other persons exposed to biological pathogens or agents, including work associated with a response to an event or occurrence of a public health emergency.
 - (3) Needs for securing laboratories or other facilities to be used in a response to an event or occurrence of a public health emergency.
 - (4) Needs for tracking of inoculations or other treatments administered to individuals in the Territory during a public health emergency.
 - (5) Needs to provide training programs for the department, ASG agencies, public and private sector partners and volunteers for response to a public health emergency.
- (c) The director may amend or revise such regulations from time to time. All regulations adopted and any and all amendments or revisions to the regulations shall be made in accordance with 4.1001 et seq., A.S.C.A.
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13.0327 Temporary regulations, rules and procedures during a declared public health emergency.

- (a) During any declared public health emergency, the director may enact one or more temporary regulations, rules or procedures as needed in the discretion of the director.
- (b) Any such temporary regulations, rules or procedures shall automatically terminate thirty days after the termination of the declared public health emergency.
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