

North Carolina Government Powers During Emergencies

Related Professionals

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North Carolina has enacted an “Emergency Management Act,” the purpose of which is to help the state prevent, prepare for, respond to, and recover from natural or man-made emergencies. The governor or the General Assembly may declare a state of emergency and exercise certain powers and duties to direct and aid in response to, recovery from, and mitigation against emergencies. See N.C. Gen. Stat. § 166A-19.10, et al. An “emergency” is defined as “[a]n occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from...public health.” On March 10th, 2020, North Carolina Governor Roy Cooper declared a state emergency due to COVID-19. This declaration gives the government of North Carolina broader powers and fiscal flexibility.

Under the State Emergency Management program, the governor has control over the State Emergency Management Program and has been given broad powers in the event of a declared state of emergency, including the following:

Powers of the Governor

→ During a state of emergency, the governor has the power:

1. To utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services.
2. Direct state and local law enforcement to enforce compliance with the state of emergency.
3. To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety.
4. Subject to the provisions of the state constitution to relieve any public official having administrative responsibilities under the Emergency

Management Act of such responsibilities for willful failure to obey an order, rule, or regulation adopted pursuant to the Act.

→ With concurrence of the Council of the State, the governor has the power:

1. To order evacuation from any area of the state, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of an emergency area, the movement of persons within the area, and the occupancy of premises therein.
2. To establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages, including the administration and enforcement of any rationing, price freezing, or similar federal order or regulation.
3. To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds, and the maintenance, extension, and operation of public utility and transportation services and facilities.
4. To waive a provision of any regulation or ordinance of a state agency or a political subdivision which restricts the immediate relief of human suffering.
5. To perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.

Powers of the Division of Emergency Management

→ Coordinate with the state health director regarding public health matters, including:

- Procurement of antibiotics
- Epidemiologic investigations
- Allocation of the Strategic National Stockpile
- Appropriate conditions for quarantine and isolation to prevent further transmission of disease
- Immunization procedures

→ Promulgation of local standards and requirements maintaining the State Emergency Operations Center

Powers of local municipalities and counties to enact ordinances to deal with states of emergency

→ At the local level, local health department directors must receive communicable disease and condition reports, investigate reported cases, ensure communicable disease control measures prescribed by the Commission for Public Health have been explained to appropriate parties, disseminate public health information, and advise local health officials about public health matters. Local health directors are empowered to examine patient records pertaining to communicable disease and to exercise quarantine and isolation authority “only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.”

- The statute states that a quarantine or isolation limiting the freedom of movement of a person “shall not exceed 30 calendar days.” If that is not adequate to protect the public health, the state or local health director must institute in superior court in the county in which the limitation is imposed an action to obtain an order extending the period of limitation of freedom.
- To impose by declaration prohibitions and restrictions in the emergency area until the state of emergency is terminated. The prohibitions and restrictions may be of the following types:
 1. Of movements of people in public places, such as (a) imposing a curfew; (b) directing and compelling the voluntary or mandatory evacuation of a certain threatened area; (c) prescribing routes, modes of transportation, and destinations in connection with an evacuation; (d) controlling ingress and egress of an emergency area and the movement of persons within that area; (e) providing for the closure within the emergency area of streets, roads, etc.
 2. Of the operation of offices, business, and other places to or from which people may travel or at which they may congregate.
 3. Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages and/or gasoline, dangerous weapons and substances (except firearms and ammunition).
 4. Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.
 5. Give to all participating state and local agencies and officers such directions as may be necessary to assure coordination among them.
- During a state of emergency, the governor also has the powers listed above, if he or she determines that local control is “insufficient to assure adequate protection for lives and property” either because local authorities have not enacted appropriate ordinances or declarations, or the emergency has spread across jurisdictional boundaries, or the scale of the emergency is so great that local authorities cannot cope with it.

Powers of the North Carolina Department of Health and Human Services (NCDHHS)

- Underneath NCDHHS is the state Commission for Public Health, which has multiple branches. The state’s Commission for Public Health makes communicable disease control rules. The state’s Secretary of Health and Human Services is charged with overseeing communicable disease prevention and control. The secretary appoints the state health director, who is a North Carolina-licensed physician that has specific duties in the communicable disease realm along with other authority delegated by the Secretary. For example, the state health director has the authority to examine patient records pertaining the communicable diseases, and to order isolation or quarantine in appropriate circumstances.
- There is also a state epidemiologist who oversees the Communicable Disease Branch under the Division of Public Health. The Communicable Disease Branch receives reports of cases of communicable diseases, conducts and coordinates surveillance of diseases and investigations, coordinates public health response to outbreaks, and provides assistance and support to local public health agencies responding to diseases as well as provides public information about communicable diseases. The State Laboratory of Public Health provides lab services that support the diagnosis of communicable diseases and conditions.

- The state health director may issue a temporary order requiring “health care providers” to report “symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition, or symptoms that may indicate the existence of a communicable disease or condition that presents a danger to the public health.” The order must specify which providers are required to provide the report, what information must be reported, and the period of time that reporting is required, which cannot exceed 90 days.
 - Importantly, persons who report pursuant to these rules upon an order from the Commission are immune from civil or criminal liability.
 - The statute provides that all information and records subject to these reports are “strictly confidential,” except for 11 specific circumstances listed at Section 130A-143 which are similar to the HIPAA disclosure rules.
- The Commission for Public Health may require certain parties to report information about communicable diseases to local health directors. These individuals who must report are:
 - Physicians licensed to practice medicine in North Carolina who have a reason to suspect that a person about whom the physician has been consulted professionally has a communicable disease or condition declared by the Commission to be reported.
 - Principal of a school and operator of a child care facility.
 - Medical facility in which there is a patient reasonably suspected of having a communicable disease or condition may
 - Person in charge of a laboratory providing diagnostic service in North Carolina shall report when the laboratory makes a finding of any positive test indicative of a communicable disease or condition for which laboratory reporting is required by the Commission.
- Allowances during emergencies.
 - A hospital may temporarily (for up to 60 consecutive days) increase its bed capacity by up to 10% over its licensed bed capacity by utilizing observation beds for hospital inpatients if the hospital notifies and obtains the approval of the Division of Health Service Regulation.
 - The Division of Health Service Regulation has the power to temporarily waive, during disasters or emergencies declared by the state, any rules of the Commission for Public Health pertaining to a hospital to the extent necessary to allow the hospital to provide temporary shelter and temporary services requested by the emergency management agency.
- Surveillance Requirements
 - Since 2012, North Carolina hospitals have been required to participate in a surveillance system designed to monitor health care-associated infections, defined as infections caused by infectious agents or toxins when there is no evidence that the patient was already infected before being admitted to the health care setting. Hospitals must make monthly reports of such infections electronically through the National Healthcare Safety Network.
 - Communicable disease surveillance is also conducted through NC DETECT, the North Carolina Disease Event Tracking and Epidemiologic Collection Tool. It receives data daily from hospital emergency departments and the Carolinas Poison Center and allows public health officials to detect information that indicate a communicable disease or other public health threat.

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