



# MN Government Health Powers

## Your Rights and Government Powers if Swine Flu\* Strikes



### Your Rights – Treatment/Vaccination

- **Right to Refuse:** Right to refuse treatment, testing, examination, vaccination, experimentation, collection of specimens and preventive treatment—and the right to be notified of the right to refuse and the possible consequences, including detention under quarantine and isolation (*Minnesota Statutes (M.S.) 12.39 and M.S. 144.419, subd.4*):
  - “Any person who is isolated or quarantined according to this section and section 144.4195 has a fundamental right to refuse medical treatment, testing, physical or mental examination, vaccination, participation in experimental procedures and protocols, collection of specimens, and preventive treatment programs.”

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\* Officially known as the H1N1 Influenza

- "A person who has been directed by the commissioner of health or any person acting under the commissioner's authority to submit to medical procedures and protocols because the person is infected with or reasonably believed by the commissioner or by the person acting under the commissioner's authority to be infected with or exposed to a communicable disease [144.419, subd.1] and who refuses to submit to them may be subject to continued isolation or quarantine according to the parameters set forth in section 144.4195." (M.S. 144.419, subd. 4)
- Before performing examinations, testing, treatment, or vaccination of an individual under subdivision 1, a health care provider shall notify the individual of the right to refuse the examination, testing, treatment, or vaccination, and the consequences, including isolation or quarantine, upon refusal (M.S. 12.39, subd. 2) However, the notice of the right to refuse is not required to be in writing, may be rushed, and may be incomplete. Without required written documentation, this right is difficult to secure or enforce.
- **Right to Stay Employed for First 21 Work Days:** Right not to be fired, disciplined, threatened or penalized by employer for absences due to isolation or quarantine for periods lasting up to 21 consecutive work days. (M.S. 144.4196, subd. 2)
- **Right to Unemployment After 21 Days:** Right to unemployment compensation for loss of employment as a result of quarantine or isolation lasting for periods longer than 21 consecutive work days. (M.S. 144.4196, subd. 3)
- **Right to Seek Injury Payments:** The right to seek compensation through the injury compensation fund set up under the Public Readiness and Preparedness Act, USC, title 42, section 247d-6e. (144.4198, subd. 4)

### Your Rights – Quarantine/Isolation

- **Right to Appeal Detention:** Petition the court to contest the court order or temporary hold at any time prior to the expiration of the order or temporary hold. (M.S. 144.4195, subd. 3(a))

- **Hearing Three Days After Petition Filed:** Hearing must be held within 72 hours from the date of the filing of the petition. *(M.S. 144.4195, subd. 3(a))*
- **Legal Counsel, With Restrictions:** Right to be represented by legal counsel for purposes of contesting quarantine and isolation, including counsel appointed at the expense of the Department of Health or a local public health board if the person is determined to be indigent. However, appointed counsel is permitted to withdraw from the case if “in the opinion of counsel, there is insufficient basis for proceeding.” *(M.S. 144.4195, subd. 5(b))*
- **Notification of Intent to Extend Detention:** Be notified three days in advance of a hearing to extend quarantine or isolation beyond 21 days. *(M.S. 144.4195, subd. 3(b))*
- **Right to Necessities as Defined by Government:** Right to food, clothing, shelter, means of communication between those in isolation or quarantine and those outside these settings, medication, and competent medical care. *(M.S. 144.419, subd. 2(g))*
- **Right to be “Monitored Regularly”:** The health status of detainees in isolation and quarantine “must be monitored regularly to determine if they require continued isolation or quarantine,” although no definitions of the words ‘monitoring’ (in person, by phone??) or ‘regularly’ (daily, weekly??) are provided. *(M.S. 144.419, subd. 2(d))*
- **24/7 Communications:** Reliable means to communicate 24 hours a day with health officials and to summon emergency health services. *(M.S. 144.419, subd. 2(d))*
- **Access to/Detention with Family Member:** A family member of a person isolated or quarantined has a right to choose to enter into an isolation or quarantine area if the family member signs a consent form declaring that he/she has been informed of the risks and consequences of entering, including the risk of being detained. *(M.S. 144.419, subd. 5(b))*
- **Seek Remedies for Treatment:** Request a hearing in district court for remedies regarding treatment during and terms and conditions of isolation or quarantine. The hearing must be

- held within 7 days of the court's receipt of the request. (*M.S. 144.4195, subd. 4*)
- **Visible Termination Date for Detention:** Automatic termination of quarantine or isolation on the expiration date of a court order, or before the date if determined by the commissioner of health. (*M.S. 144.419, subd. 3*)
  - **Release at Discretion of Commissioner:** Immediate release from quarantine or isolation when pose no known risk of transmitting a communicable or potentially communicable disease to others. (*144.419, sub 2(f)*)
  - **Safe and Clean Captivity:** Safe and hygienic premises for isolation and quarantine. (*M.S. 144.419, subd. 2(h)*)

### Government Health Powers – Vaccination/Treatment

- **No Emergency Declaration Required:** Chapter 144.419 and 144.4195 make no mention of, or need for, Chapter 12 (Emergency Management statute) authority or emergency declaration requirements.
- **"Any Person" Authorization:** Health Commissioner may authorize "any person" to administer vaccinations or dispense medication. (*M.S. 144.4197*)
- **'Arms Length' Authority:** Health Commissioner has authority to dispense vaccinations and medications to groups of individuals using written protocols rather than to individuals through professional medical examinations. (*M.S. 151.37, subd. 2 (a) and (b)*)
- **Limit Citizen Information About Dangers:** Health Commissioner may "modify state drug labeling requirements" (i.e. limit public knowledge of dangers, medical contraindications, and side effects of medications and vaccinations). (*M.S. 151.37, subd. 2 (b)*)
- **Limit Examination of Individuals:** Commissioner of Health may "modify...medical screening criteria and documentation," potentially leading to insufficient information about persons prior to prescribing and administering vaccines and medications, and

insufficient documentation of what actually was known about or done to the individual. *(M.S. 151.37, subd. 2 (b))*

- **No Declaration of Public Health Emergency Required:** Health Commissioner may authorize administration of vaccine or medication in emergency and non-emergency situations. *(M.S. 144.4197)*
- **Prescribe for Populations, Not Individuals:** Health Commissioner may direct a registered nurse to implement a vaccine or prescription protocol for populations of patients, rather than for individual patients *(M.S. 148.235, subd. 8 and 9)*
- **Need Not be a Medical Doctor:** Commissioner of Health, if a licensed practitioner (MD, OD, DDS, optometrist, podiatrist, physician's assistant, veterinarian *(M.S. 151.01, subd 23)*) or the commissioner's designee, if a licensed practitioner, may prescribe medication to an individual, or use a written protocol for mass dispensing to large populations. *(M.S. 151.37, subd. 2(b))*
- **No Exam Needed:** Designate persons and entities to expedite medication dispensing through household representatives, U.S. mail, or centralized dispensing or vaccinating locations. *(144.4198, subd 2 (b))*
- **State Control of Drugs and Supplies:** State Health Department permitted to amass "antituberculosis drugs, biologics, vaccines, antitoxins, serums, immunizing agents, antibiotics, antivirals, antidotes, other pharmaceutical agents, and medical supplies to treat and prevent communicable disease." *(M.S. 151.37, subd. 10)*
- **Limited Liability:** "The U.S. Secretary of Health and Human Services shall by regulation establish a table identifying covered injuries that shall be presumed to be directly caused by the administration or use of a covered countermeasure and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply. The Secretary may only identify such covered injuries, for purpose of inclusion on the table, where the Secretary determines, based on compelling, reliable, valid, medical and scientific evidence that administration or use of the

covered countermeasure directly caused such covered injury.”  
(U.S. Code, title 42, section 247d-6e(b)(5)(a))

- **Enforce Governor’s Orders:** “Every organization for emergency management established pursuant to this chapter and its officers shall execute and enforce orders and rules as may be made by the governor...” (M.S. 12.28)

## Government Police Powers – Quarantine and Isolation

- **No Emergency Declaration Required:** Chapter 144.419 and 144.4195 make no mention of, or need for, Chapter 12 (Emergency Management statute) authority or emergency declaration requirements.
- **Detention:** Commissioner of Health may secure police assistance to apprehend and detain individuals in quarantine or isolation. (M.S. 144.4195, subd. 1 and 2)
- **Subvert Due Process Rights:** Commissioner of Health may direct that any person or group of persons be detained for 36 hours without a court order in quarantine or isolation. (MS. 144.419, subd. 2(a))
- **Delegate to Local Health Board:** Health Commissioner may delegate court-ordered detention authority and court hearings to local public health boards. (M.S. 144.4195, subd.7)
- **Detain for Three Weeks Without a Court Hearing:** Commissioner of Health may detain individuals in quarantine or isolations for up to 21 days with a court order. (M.S. 144.4195, subd. 1(e))
- **31.5 Day Detention With Court Order:** Commissioner may detain persons for 30 days after the court order. (MS. 144.4195, subd. 3 (d))
- **No Maximum Detention:** Commissioner may petition the court to extend detention beyond the 30 days. (MS. 144.4195, subd. 3(d))
- **Recoup Costs of Defending Detention Order:** Commissioner of Health may charge persons for costs associated

with the person's appeal to the court for termination of detention. (M.S. 144.4195, subd. 5)

- **Long Distance Hearings:** The court on the advice of the Commissioner of Health may elect to hold court hearings by phone, video or electronic means. (M.S. 144.4195, subd. 5 (c))
- **Limit Media and Other Access to Detainees:** Health Commissioner may restrict access to a quarantine or isolation area, including to individuals in quarantine or isolation. (M.S. 144.419, subd 2(d))

### **Law Enforcement Powers** (limited list)

- **Shoot to Kill:** Police officers are authorized to use deadly force if a person attempts to flee or avoid apprehension, detention, quarantine, transportation or isolation. (M.S. Minnesota Laws 2009, Chapter 41 (SF 1462 (Prettner Solon)) – although the 2009 legislature repealed the direct reference to deadly force authority, the continued authority of the police to use deadly force was read into the record of the Senate Judiciary Committee by Sen. Don Betzold at the request of MN Sens. Mary Olson and Linda Scheid, March 31, 2009)

### **Governor Powers** (limited list)

- **Write Law:** "The governor may "make, amend, and rescind the necessary orders and rules to carry out the provisions of this chapter...but no order or rule has the effect of law except as provided by section 12.32. (M.S. 12.21 subd. 3(1))
- **Suspend Law:** "Orders and rules promulgated by the governor under authority of section 12.21, subdivision 3, clause (1), when approved by the Executive Council and filed in the Office of the Secretary of State, have, during a national security emergency, peacetime emergency, or energy supply emergency, the full force and effect of law. Rules and ordinances of any agency or political subdivision of the state inconsistent with the provisions of this chapter or with any order or rule having the force and effect of law issued under the authority of this chapter, is suspended during the period of time and to the extent that the emergency exists." (M.S. 12.32)
- **Declare National Emergency:** May declare national emergency in all or part of Minnesota. (M.S. 12.31, subd. 1)

- **Declare Peacetime Emergency:** May declare “only when an act of nature, a technological failure or malfunction, a terrorist incident, an industrial accident, a hazardous materials accident, or a civil disturbance endangers life and property and local government resources are inadequate to handle the situation.”  
*(M.S. 12.31, subd. 2)*
- **Limit Liability for Injury to Persons:** May issue executive order saying number of ill or injured persons exceeds the capacity of one or more regional hospital systems and that care has to be given in temporary care facilities, relieving responders (persons or organizations providing care during declared emergency) of liability for injury or death “as a result of good faith acts or omissions” in rendering “emergency care, advice, or assistance”...except if willful or wanton.” *(M.S.12.61, subd 2)*
- **Commandeer Private Lives/Property:** “When necessary to save life, property, or the environment during a national security emergency or during a peacetime emergency, the governor, the state director, or a member of a class of members of a state or local emergency management organization designated by the governor, may:
  1. Require any person, except members of the federal or state military forces and officers of the state or a political subdivision, to perform services for emergency management purposes as directed by any of the person described above: and
  2. Commandeer, for emergency management purposes as directed by any of the persons described above, any motor vehicles, tools, appliances, **medical supplies**, or other personal property and any facilities. *(M.S. 12.34, subd. 1)*
  - NOTE: “Just compensation” must be paid, appeals can be made, and “an able-bodied person required to perform services for emergency management who refuses, neglects, or otherwise fails to perform the services required under subdivision 1, is guilty of a misdemeanor and must be punished by imprisonment in the county jail for not less than ten days or more than 90 days. *(M.S. 12.34, subd. 2 and 3)*

- **Control Conduct:** The governor may cooperate with the President, the military and other federal agencies and the agencies of other states in matters including the “conduct of persons in the state, including entrance or exit from any stricken or threatened public place, occupancy of facilities, and the movement and cessation of movement of pedestrians, vehicular traffic, and all forms of private and public transportation...” (M.S. 12.21 subd. 3)

### Prohibited or Unavailable

- **Public Access to Complete Information on Dangers & Risks of Vaccines/Medication:** Commissioner of Health may limit, reduce, or not include full information on the dangers, adverse reactions, medical contraindications and risk of death or injury of vaccines and medications prescribed by the Commissioner or her/his designee. (M.S. 151.37, subd. 2(b))
- **Lawsuits Against Vaccinators/Dispensers:** Those who are authorized by the state health commissioner to administer vaccinations or dispense legend drugs are not liable for the outcomes of their actions. (M.S. 144.4197)
- **Lawsuits Against Anyone Involved in Mass Dispensing of Vaccines and Medication:** Any “person, corporation, charitable organization, government entity, religious entity, non-profit entity, or other legal entity, or an employee or agent” of such “who, during the preparation for and setup, operation, and demobilization of a closed POD [“point of dispensing” location], acts in good faith and under the direction of a closed POD plan that has been approved by the commissioner of health, local public health agency, or tribal public health authority” causes “the death or injury of a person, or for damage to property” unless the action is found to be malfeasance or “willful or wanton” is absolved of all liability for the results of their actions. (M.S. 144.4198, subd. 3)

**TO READ COMPLETE MINNESOTA STATUTES**

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Go to: <https://www.revisor.leg.state.mn.us/pubs/>

Search under: "Retrieve by number" (left side) or under "Minnesota Statutes" link titled "Table of Chapters":

Look for Minnesota Statutes:

**Chapter 12. Emergency Management** (12.01 – 12.61)

**Chapter 13. Public Health Data** (13.3805, subd. 1 *together with* 144.4195, subd. 6)

**Chapter 144. Quarantine and Isolation** (144.419 – 144.4197)

**Chapter 145. Commissioner; Powers and Duties** (145.06, subd. 6-8)

**Chapter 148. Public Health Occupations.** (148.235 (subd. 8 and 9))

**Chapter 151. Pharmacy** (151.37)