

Wisconsin  
Department of Health Services

**PUBLIC HEALTH LAW**  
New Local Health Officer Orientation

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**General Legal Authority**

Public health legal authority exists at all levels of government:

- o Federal – statutes and regulations
- o State – statutes and administrative rules
- o Local municipalities – ordinances/regulations
- o Tribes – ordinances

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**General Legal Authority**

State Statutes

- o Enacted by legislature, signed by governor
- o Public health laws are primarily at Chapters 250 – 257
- o <http://docs.legis.wisconsin.gov/statutes>
- o <http://docs.legis.wisconsin.gov/>

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### General Legal Authority

**Health.**

- 250 Health; administration and supervision.
- 251 Local health officials.
- 252 Communicable diseases.
- 253 Maternal and child health.
- 254 Environmental health.
- 255 Chronic disease and injuries.
- 256 Emergency medical services.
- 257 Emergency volunteer health care practitioners.

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### General Legal Authority

**Administrative Rules**

- o Promulgated by a state agency; legislative review
- o Statement of general policy and interpretation of a statute adopted to govern the enforcement and administration of the statute
- o Full effect of law
- o <http://docs.legis.wisconsin.gov/code>

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### General Legal Authority

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- Ch. 1-19 Management and Technology and Strategic Finance
- Ch. 30-100 Community Services
- Ch. 101-109 Medical Assistance
- Ch. 110-199 Health
- Ch. 250- Economic Support

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### General Legal Authority

Local Ordinances

- o Home rule – control over local affairs, subject to legislative enactments of statewide concern
- o Public health is statewide concern – Wis. Stat. § 250.04(7)
- o May pass ordinances on same subject matter as state laws, as long as the ordinances complement and do not conflict with, state laws

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### General Legal Authority

Local Ordinances

- o Several public health statutes expressly authorize adoption of local ordinances
  - Lead poisoning/exposure: “same or higher standards” – Wis. Stat. § 254.154
  - Radiation: “identical to” – Wis. Stat. § 254.34
  - Human health hazard: “at least as restrictive” – Wis. Stat. § 254.59

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### General Legal Authority

Powers and Duties

- o Powers – authorize you to act
  - Local health officer “may inspect schools and other public buildings. . . to determine. . . sanitary condition”
- o Duties – require you to act
  - Local health officer “shall immediately report to the department” when an outbreak occurs

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### General Legal Authority

Broad powers derive from *State ex rel Nowotny v. City of Milwaukee (1909)*

- o "A health officer who is expected to accomplish any results must necessarily possess large powers and be endowed with the right to take summary action, which at times must trench closely upon despotic rule. The public health cannot wait upon the slow processes of legislative body or the leisurely deliberation of court. . ."

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### General Legal Authority

Broad powers must be balanced against individuals' rights

- o The right to be free from restrictions is overcome only when the exercise of governmental power is necessary
- o Choose least restrictive measure that will assure public's health
- o Least restrictive measure will depend upon the threat to the public's health

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### General Legal Authority

Intrusion on civil liberties

- o ACLU press release during H1N1:
  - \* . . . Government actions designed to control communicable diseases raise serious civil liberties concerns, such as the loss of one's physical freedom to assemble, travel and work. Public health actions that single groups or individuals because of their ethnicity or country of origin also raise serious civil liberties concerns.\*

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### General Legal Authority

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- o General supervision throughout the state of the health of citizens
- o Maintain a public health system "in cooperation with local health departments"
- o May issue orders to local health departments
- o Immunization; maternal and child health; chronic disease
- o Same powers and duties as local health

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### General Legal Authority

Local Boards of Health and Health Officers

- o Shall assure the enforcement of state public health statutes and rules – Wis. Stat. § 251.04(1)
  - May contract with a private or public entity to provide public health services
- o Shall enforce state public health laws and local public health laws that are consistent with state laws – Wis. Stat. § 251.06(3)

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### General Legal Authority

Local Health Departments

- o General duties in Wis. Stat. § 251.05
  - Surveillance and control of communicable diseases and other diseases
  - Human health hazard control
  - Develop public health policies and procedures for the community; involve policymakers and public in developing community health improvement plan
  - Act as agent of department during an emergency, if designated
- o Specific duties in DHS 140

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### Emergency Powers

- Governor may issue an executive order declaring a state of emergency related to public health for the state or any portion of the state; designate DHS as the lead agency - Wis. Stat. § 323.10
- Among Governor's powers: suspend administrative rules that hinder or prevent necessary responses – Wis. Stat. § 323.12(4)

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### Emergency Powers

If DHS is the lead agency, it acts as public health authority – Wis. Stat. § 250.041

- Purchase, store or distribute pharmaceutical agents and medical supplies
- Order compulsory vaccinations
- May designate local health as its agent and grant public health authority powers
- Even without designation, consult with local health to the extent possible

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### Emergency Powers

- Local units of government may declare, by ordinance or resolution, an emergency whenever conditions arise that impairs health – Wis. Stat. § 323.11
- May do whatever is "necessary and expedient for the health" of persons – Wis. Stat. § 323.14(4)

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### Communicable Diseases

- Wisconsin Statutes Chapter 252
  - Communicable diseases generally
  - Tuberculosis
  - Meningococcal disease
  - Hepatitis B
  - STD
  - HIV
- Administrative Rule DHS 145

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### Communicable Diseases

#### General Powers and Duties of Local Health

- Local health "may do what is reasonable and necessary for the prevention and suppression of disease" – Wis. Stat. § 252.03(2)
- Local health officers "shall promptly take all measures necessary to prevent, suppress and control communicable diseases. . ." – Wis. Stat. § 252.03(1)

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### Communicable Diseases

#### General Powers and Duties of Local Health

- May forbid public gatherings when deemed necessary to control outbreaks or epidemics – Wis. Stat. § 252.03(2)
- May close schools – implied through general authority and 'school day' under s.115.01(10)
- Shall report the appearance of communicable disease to the department or shall direct the reporter to the department – Wis. Stat. § 252.05(1)
- Shall report outbreaks and epidemics to the department – Wis. Stat. § 252.05(7)
- May require additional information from reporters – Wis. Stat. § 252.05(5)

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### Communicable Diseases

- Local Health Officer shall immediately investigate and cause examinations to be made as necessary upon report or appearance of a communicable disease – Wis. Stat. § 252.03(1)
  - If the local health officer is not a physician, one must be consulted if there is doubt as to the diagnosis or if advice is needed
- Shall order additional lab tests if:
  - Dispute regarding disease determination, or
  - Potential public health significance, or
  - More testing will aid investigation – Wis. Stat. § 252.05(9)

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### Communicable Diseases

- Local health officer shall use reasonable means to confirm a case or suspected case, shall ascertain possible sources of infection and exposures to infection, shall require restrictions or other control measures – Wis. Stat. § 252.06(3); Wis. Admin. Code § DHS 145.05(1)
- The Department, in cooperation with local health officer, shall use special surveillance and control measures to control an unusual occurrence of a communicable disease – Wis. Admin. Code § DHS 145.05(4)

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### Communicable Diseases

- If a person is known to have, or is suspected of having, a contagious medical condition that poses a threat, the Department or local health officer may issue one or more of the seven directives listed in Wis. Admin. Code § DHS 145.06(4)
  - Applies to the reportable diseases listed in Appendix A of DHS 145 and those the state epidemiologist declares to be reportable
- The chosen directives must fit the particular communicable disease and the behaviors presented

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### Communicable Diseases

- A person is considered to have a known contagious medical condition which poses a threat if:
  - The person has been medically diagnosed and
  - Exhibits any one of the six behaviors listed in DHS 145:
    - Has transmitted or likely will transmit
    - Refuses or is unable to follow medical regimen
    - Misrepresented facts or other willful act that increases the threat of transmission from an epidemiological standpoint

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### Communicable Diseases

- A person is suspected of having a contagious medical condition which poses a threat if:
  - The person exhibits any of the six behaviors in the last slide and
  - One of the following exists:
    - Has been linked epidemiologically to exposure to a known case, or
    - Has lab findings indicative of a CD, or
    - Exhibits symptoms medically consistent with a CD

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### Communicable Diseases

Seven possible directives:

- Participate in education or counseling
- Participate in treatment for known or suspected condition
- Undergo tests and exams to identify, monitor and evaluate disease
- Notify or appear before local health official to verify status, for testing or for direct observation of treatment

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### Communicable Diseases

Seven possible directives (cont'd)

- o Stop conduct or employment that is a threat to others
- o Reside part-time or full-time in an isolated or segregated setting
- o Be placed in an appropriate institutional treatment facility until noninfectious

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### Communicable Diseases

If isolation or quarantine is ordered - Wis. Stat. § 252.06:

- o May forbid contacts by certain persons
- o May use others to guard the quarantine site
- o May also direct persons who own or supervise property or animals and their environs, which present a threat of transmission of a CD, to abate the threat - Wis. Admin. Code § DHS 145.06(6)

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### Communicable Diseases

A court order is not necessary if a person voluntarily complies with a directive:

- Issue the directive in writing
  - o Informal letter
  - o Formal "Directive/Order"

If a person fails to comply, the local health officer may petition a court to order compliance - Wis. Admin. Code § DHS 145.06(5)

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### Communicable Diseases

Work with local counsel to draft a petition that includes facts to establish:

- The person was given the directive in writing
- The directive included the reasons for giving the directive and the evidence supporting those reasons
- The person has had the opportunity to seek counsel and
- The directive is the least restrictive that would serve to correct the situation and protect the public

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### Communicable Diseases

Tuberculosis – Wis. Stat. § 252.07; Wis. Admin. Code §§ DHS 145.08 - 145.12

- o Shall at once investigate and make and enforce necessary orders
- o May order medical evaluation, directly observed therapy or home isolation if the person does not comply with an order
- o May order confinement to a facility
  - Different process than for other CDs
  - May confine for 72 hours before a hearing

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### Communicable Diseases

Sexually Transmitted Diseases – Wis. Stat. § 252.11; Wis. Admin. Code §§ DHS 145.14 -145.22

- o Shall investigate as necessary upon having knowledge of:
  - a reported or reasonably suspected case or contact of an STD for which no appropriate treatment is administered, or
  - of an actual contact of a reported case, or
  - of potential contact of a reasonably suspected case,
- o Shall require examination of suspects, including physical exam and lab and clinical tests

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### Maternal and Child Health

- Wisconsin Statute Chapter 253
  - WIC
  - Reproductive health
  - Newborn screening
  - Birth defects
  - Infant mortality
- Wis. Admin. Code § DHS 149 – WIC

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### Environmental Health

- Wisconsin Statutes Chapter 254
  - Toxic substances
  - Radiation protection
  - Animal-borne and vector-borne disease
  - Human health hazards
  - Tobacco products to minors

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### Environmental Health

#### Agent Status

- Chapter 254 gives local health powers and duties
- In addition, the department may designate local health to carry out the department's functions under Chapter 254
- Duties and powers of department delegated through written memorandum of agreement

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**Environmental Health**

- Shall report to the department environmental contamination; lead poisoning/exposure – Wis. Stat. §§ 254.02 and 254.13
- Shall issue orders to abate lead hazard – Wis. Stat. § 254.166
- Shall close or restrict access to beaches if human health hazard exists – Wis. Stat. § 254.46
- Shall enforce state rules to control human disease from animal-borne or vector-borne disease transmission – Wis. Stat. 254.51

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**Environmental Health**

Human Health Hazard

- o Shall order abatement of human health hazard on private premises – Wis. Stat. § 254.59
- o Procedure:
  - Determine if health hazard exists by consent to enter premise or via special inspection warrant – Wis. Stat. § 66.0119 has forms to use
  - If health hazard exists, send registered mail, with return receipt requested, notifying owner and occupant and ordering abatement/removal within 30 days

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**Environmental Health**

Human Health Hazard (cont'd)

- o If no abatement/removal in the manner approved by local health, then local health may enter premises and abate/ remove the health hazard or contract to have health hazard abated/removed
  - Recover the cost of abatement/removal from:
    - o Owner of the premises
    - o Person causing or permitting the health hazard

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**Environmental Health**

- May declare dilapidated, unsafe or unsanitary housing to be a human health hazard – Wis. Stat. § 254.593
- May declare real property to be a HHH if in violation of a health or safety building code, or in violation of an LHO order – Wis. Stat. § 254.595

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**Complementary Laws**

**Access to health information – HIPAA:**

- o A covered entity may disclose PHI to a public health authority for public health activities and purposes
- o If local health is also a covered entity, it may use PHI in all cases in which it is permitted to disclose PHI for public health activities – 45 CFR 164.512

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**Complementary Laws**

**HIPAA**

- o Public Health Authority:
  - federal, state, local or tribal agency responsible for public health matters, and its employees, agents and contractors – 45 CFR 164.501
- o Public Health Activities and Purposes:
  - Prevent or control disease or injury
  - Conduct surveillance, investigation and intervention
  - Notify person exposed to communicable disease or at risk of contracting or spreading CD, if authorized by law to make notification – 45 CFR 164.512

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### Complementary Laws

State laws regarding confidentiality

- o Communicable disease reporting is confidential except if redisclosure is needed for investigation, control and prevention of the disease – Wis. Admin. Code § DHS 145.04(2)(d)
- o Patient health care records are confidential but may be disclosed to public health upon your request and to perform a legally authorized function – Wis. Stat. § 146.82(2)

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### Complementary Laws

Access to Health Information

- o All records concerning STDs are confidential and may not be divulged except as are necessary for the preservation of public health – Wis. Stat. § 252.11(7)
- o Results of an HIV test are confidential and may not be disclosed except to the state epidemiologist or designee for surveillance, investigation or control – Wis. Stat. § 252.15(3m)(d)6.

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### Complementary Laws

Health Care Volunteer Protections

- o Non-employee physician who provides medical oversight services to local health, free of charge, is state agent of the department – Wis. Stat. § 251.07
- o Volunteer who registers with state or local agency to assist during a disaster or imminent threat of disaster is considered an employee of the agency – Wis. Stat. § 323.41
- o Workers' compensation; indemnification

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### Complementary Laws

Chapter 257 – during declared emergency

- o Health care practitioners:
  - Broad array, now including EMS and funeral directors
  - Currently licensed/certified in Wisconsin or in another state if that state's license allows substantially similar acts
  - Not now licensed/certified, but licensed/certified in Wisconsin in prior 10 years

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### Complementary Laws

Health care practitioner provided legal representation and indemnification if:

- o Uncompensated
- o Services provided on behalf of a health care facility or mass clinic, or at the request of the department or local health department
- o Is registered in the state's electronic volunteer registry
- o Registers in writing with the health care facility or mass clinic
- o Local authority must notify DHS if will use volunteers under this statute

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### Complementary Laws

Mutual Assistance

- o During state of emergency declared by the Governor:
  - Local and tribal health may provide assistance outside its jurisdiction if requested by a city, village, town or county, or a person in ICS
  - Requester is responsible for personnel or equipment costs if responder requests payment – Wis. Stat. § 66.0314

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### Complementary Laws

Mutual Assistance

- o If a Governor-declared state of emergency is not in place:
  - Local or tribal health may provide assistance outside its jurisdiction to other local or tribal health, upon request
  - Unless an agreement exists that provides otherwise, requester is responsible for personnel and equipment costs if responder requests payment – Wis. Stat. § 66.0312

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### Contact Information

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