



PUBLIC HEALTH AUTHORITY Fact Sheet

Delaware Public Health Authority

Background

Nationwide, despite existing and long-standing public health authority, the COVID-19 pandemic and accompanying public health response have triggered significant backlash in state legislatures. Particularly during the 2021 and 2022 legislative sessions, state governing bodies considered an unprecedented number of bills aimed at curbing the power of public health agencies and leaders. Delaware was and remains no exception to these attacks on public health. During the 2021 and 2022 legislative sessions, the Delaware General Assembly considered at least three bills attempting to drastically curb public health authority at the state and local levels of the executive branch of government. Many of these bills misconstrued critical definitions, legal concepts, and sources of law while also conflating the roles of the branches of government.

In response, the Network for Public Health Law's Eastern Region identified the need to provide accurate definitions of legal concepts, clarifying information on the roles of certain government officials, including an explanation of the limitations placed on officials acting in a public health capacity. Specifically, this resource includes an explanation of

- public health law generally; and
- the source and breadth of public health authority granted to the Deputy Health Officers and local Boards of Health in Delaware.

This resource may be used to:

- 1) provide legal technical assistance by defining the scope of authority delegated to the Deputy State Health Officers and local Boards of Health; and
- 2) educate state and local decisionmakers on the meaning of public health authority and the complexities that exist, including the extensive limitations that restrict existing public health authority.



Public Health Law: An Introduction

Public health law focuses on issues involving the government's legal authority and duty "to ensure the conditions for people to be healthy"¹ while also taking into consideration the "individual rights to autonomy, privacy, liberty, property and other legally protected interests."² Through the 10th Amendment, the U.S. Constitution reserves the power to regulate health, safety, and welfare for the common good, known as the police power, to the states.³ Police powers may be used by states to promote laws in the interests of the general welfare and health of the community; this is the quintessential and plenary power to regulate for the public health. Thus, the sources of legal authority to regulate public health comes from state constitutions, local charters, state and local legislation, state regulations, and case law.

Examples of the use of police power to promote public health include laws authorizing: (1) isolation and quarantine; (2) community vaccination; (3) licensure of medical professionals; and (4) response to public health emergencies, such as bioterrorism or infectious disease outbreaks. Though broad, police powers may be limited by fundamental constitutional rights such as the right to liberty and freedom of speech, subject to a balancing of community and individual interests.⁴

Local Government: Structure and Authority


In Delaware, the state and local government structure is centralized, meaning local health units are primarily led by employees of the state and the state retains authority over most fiscal decisions. There are two types of local governments: counties and municipalities. Counties are subject to Dillon's Rule, meaning that a county's authority is limited to the powers granted to it by state legislation.⁵ The State is divided into three counties.⁶ Each county has differing structure and authority. In New Castle County, the county council consists of 13 members and has all legislative powers.⁷ The county executive is elected every 4 years and serves as the executive decision maker.⁸ In Kent County, a 7-member "levy" court makes legislative decisions and serves as the executive body.⁹ In Sussex County, the legislative body consists of 5 members and has the executive power as well. A county administrator, however, must be appointed to oversee some functions.¹⁰

Delaware contains 57 incorporated municipalities, which include villages, towns, and cities, all chartered by the Delaware General Assembly.¹¹

Public Health Authority

Department of Health and Human Services: Powers, Duties, and Structure

Delaware Health and Social Services (DHSS) is a state agency and aims to "improve the quality of life for Delaware's citizens by promoting health and well-being, fostering self-sufficiency, and protecting vulnerable populations."¹² Additionally, DHSS includes a Division of Public Health which offers services and has authority to effectuate this mission. A Secretary heads DHSS but the Director is the executive for the Division of Public Health.¹³ Although not required by law, under the supervision of the Director is a Clinical Deputy Director and an Associate Deputy Director as well as a State Medical Director. As a matter of practice, Health Services in




Delaware are divided into northern and southern regions. There are no local health departments, and the state's leadership oversees and administers public health services across the state.¹⁴ Municipalities and local public health officials may, with the consent and approval of the Secretary of DHSS, adopt ordinances or regulations consistent with existing state law.¹⁵

In addition to serving as the authority on all matters relating to the preservation of life and health of the people in Delaware, DHHS serves as the supreme authority in all matters relating to quarantine. It also has the specific authority to adopt, promulgate, amend, and repeal regulations consistent with law, including:

- Controlling and preventing the spread of disease;
- Preventing and controlling nuisances;
- Providing for the protection of drinking water;
- Providing for the sanitary control of swimming pools;
- Regulating plumbing;
- Providing for the sanitary production, distribution and sale of market milk and dairy products and other foods;
- Providing for the sanitary control of tourist camps, trailer camps and other public camps;
- Protecting and promoting the health of all mothers and children;
- Providing for proper sanitation, ventilation and hygiene in schools and for sanitary and health requirements for food handlers in the school;
- Protecting and promoting the public health generally, and carrying out all other purposes of the laws pertaining to the public health;
- Providing the mechanisms for yearly examinations for food handling employees;
- Ensuring quality assurance in hospice programs;
- Preventing and controlling the spread of vaccine-preventable diseases in children;
- Establishing standards for public health quality assurance in home health agency programs;
- Establishing standards for public health quality assurance in birthing centers;
- Establishing standards for public health quality assurance in pediatric extended care facilities;
- Providing for the sanitary control, human waste disposal and control of human disease;
- Establishing standards for regulation in the operation of adult day care facilities;
- Establishing standards for regulation of lead-based paint hazard control activities;
- Promulgating and enforcing standards to regulate food establishments;
- Establishing standards for public health assurance in the practice of cosmetology and barbering;
- Establishing standards for the sanitary operation of tattoo parlors and body piercing establishments;
- Establishing standards for regulation of the operation of personal assistance services agencies;
- Establishing standards for a facility accreditation program;
- Establishing standards for public health quality assurance in the operation of dialysis center;
- Regulating the training and educational qualifications for the certification of animal welfare officers¹⁶

Deputy State Health Officers: Powers and Duties



According to Delaware state law, the Secretary must appoint a deputy state health officer for each county, who must be trained in public health.¹⁷ The appointment is for a period of 4 years and the position is fully compensated by the state. The Secretary may remove the health officer only for cause and after a hearing.¹⁸

The deputy state health officers act solely on behalf of the state and do not possess local public health powers. Under the direction of the Secretary, the deputy state health officer is charged with enforcing all laws, rules, and regulations of the state pertaining to public health.¹⁹ They must also undertake other duties assigned to them by DHSS and supervise all public health matters within their counties and the City of Wilmington, but not in other incorporated cities and towns with boards of health.²⁰

The governing authorities of any incorporated city or town, other than the City of Wilmington, may designate a deputy state health officer to act as health officer only if adopted and approved by DHSS.²¹ If adopted, the deputy state health officer will then exercise the powers and perform the duties of the local board of health.²²

Local Boards of Health: General Powers

While counties do not have local boards of health, many municipalities do. Except in the City of Wilmington, the legislative body of every city and the commissioners of every incorporated town, must appoint a local board of health each January.²³ The board must include at least three and no more than seven persons.²⁴ One member must be a physician, authorized to practice medicine.²⁵ If there is a port physician appointed by the Governor, they shall be a member of the local board ex officio.²⁶ If the common council or the commissioners are not able to secure a local board, the common council or commissioners of that municipality are the local board of health.²⁷

The city council or town commissioners have the authority to fill any vacancy and to remove for sufficient cause any member of the local board.²⁸ The boards are required to annually elect a president and secretary from among their members. The board is required to meet at least once every three months.²⁹

All local boards of health shall enforce quarantine orders, and rules, regulations, and orders adopted by the Department of Health and Social Services.³⁰ Additionally, each local board of health may make orders and regulations generally concerning the following:

- (1) The place and mode of quarantine;
 - (2) The examination and purification of vessels, boats and other craft not under quarantine;
 - (3) The treatment of vessels, articles or persons;
 - (4) The regulation of infected places;
 - (5) The apprehension, separation and treatment persons exposed to any infectious or contagious disease;
- and
- (6) Regulating and prohibiting or preventing all communication or interaction with all houses, tenements and places who have been exposed to contagious or infectious disease.³¹

In localities where there are no local boards of health, or where the board refuses or neglects to act, DHHS may investigate all complaints made in writing, and if it shall find a nuisance to exist it shall order the same to

be abated in a reasonable time.³² In such cases the Secretary of DHHS shall have all power and remedies given by law to local boards.

Local Boards of Health-Specific Powers:

Action	Law	Comments
Supervision, Inspection, and Regulation of Public Laundries and Washhouses	16 Del.C. § 304	<ul style="list-style-type: none"> • May not permit employment of a person with a contagious/infections disease; • No person shall sleep in a public laundry/washhouse; • Proper ventilation and drainage is required; • Specific requirement for composition of floor materials; • Citizen requests for inspections will be honored
Cleansing or Closing Unfit Dwellings	16 Del.C. § 305	<ul style="list-style-type: none"> • Local boards of health may require any cellar, room, tenement, or building to be properly cleaned if too crowded or unclean, or occupants are becoming sick due to suspected unclean conditions
Cleansing Diseased Places	16 Del.C. § 306	<ul style="list-style-type: none"> • If reasonable grounds exist to believe there is disease in a house, cellar, yard, or dock, the local board of health may require cleaning to mitigate disease
Neglected Privy Well	16 Del.C. § 307	<ul style="list-style-type: none"> • If 2 members of the local board of health declare a privy well to be a nuisance, they can order it be cleaned by the tenant, owner, or agent to clean
Slaughterhouses	16 Del.C. § 308	<ul style="list-style-type: none"> • Local board of health may declare a slaughterhouse a nuisance and require it be cleaned
Offensive Matters in Public Places	16 Del.C. § 309	<ul style="list-style-type: none"> • Local board of health has the authority to penalize a person for offensive behavior
Abatement of Nuisances	16 Del.C. § 310	<ul style="list-style-type: none"> • Local board of health may require that a person who caused a nuisance or who is responsible for the nuisance, remedy it
Entry for Destruction or Removal of Nuisances	16 Del.C. § 311	<ul style="list-style-type: none"> • If the local board of health finds it necessary to preserve the public health, the board may enter a building/vessel to examine and destroy



		the nuisance or remove it or prevent it.
Removal of Infected Persons and Possession of Condemned Lodgings	16 Del.C. § 312	<ul style="list-style-type: none"> A local board of health may make application to a justice of the peace under oath, to request that the sheriff 1) remove a person infected with a contagious disease or 2) take possession of a condemned lodging
Care of Persons having Infections or Contagious Disease	16 Del.C. § 313	<ul style="list-style-type: none"> A local board of health may procure suitable places for the reception of persons under quarantine and persons sick with the Asiatic or malignant cholera or any other malignant of infectious or contagious disease.
Common Carriers and Submission to Regulation and Examination	16 Del.C. § 314	<ul style="list-style-type: none"> When quarantine is declared, all railroads, steamboats or other common carriers and the owners or assignees must submit to regulation and examination by a local board of health or health officer
Temporary Structures for Isolation Purposes; Disinfection of Property	16 Del.C. § 315	<ul style="list-style-type: none"> The local board of health may erect temporary structures for the protection or isolation of those infected with a contagious disease The local board of health may disinfect property as a reasonable precaution to prevent the spread of disease
Penalties	16 Del.C. § 317	<ul style="list-style-type: none"> A person faces fines and/or imprisonment for violating the provisions in Title 16, Part I, Chapter 3 or any regulation of the local board of health. If the violation is by a corporation, any officer with authority over the matter is subject to the fine/imprisonment.
Duty to Report Contagious Disease	16 Del.C. § 502	<ul style="list-style-type: none"> Every physician or other person having knowledge of a dangerous, contagious disease, which DHHS required be reported, must be reported to the local health board.
Local Board of Health's Duty to Report	16 Del.C. § 501	<ul style="list-style-type: none"> Local boards of health shall report the existence of infections/contagious disease to DHHS

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This document was developed by Brooke Torton, J.D., Senior Staff Attorney, Network for Public Health Law—Eastern Region. The Network promotes public health and health equity through non-partisan educational

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SUPPORT

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¹ Gostin LO. Public Health Law: Power, Duty, Restraint. 2nd ed. Berkeley, CA: University of California Press; 2008: 4.

² Public Health Law Center [Internet]. St. Paul, MN: Public Health Law Basics; 2010 [cited 2012 Dec. 1]. Available from <http://phlc.stylefish.com/topics/public-health-law-basics>.

³ CDC Public Health Law Program [Internet]. Atlanta: Public Health 101. [cited 2012 Dec. 1]. Available from: <http://www.cdc.gov/phlp/docs/PHL101/PHL101-Unit%201%20-%2016Jan09-Secure.pdf>.

⁴ 8 Gostin LO. Public Health Law: Power, Duty, Restraint. 2nd ed. Berkeley, CA: University of California Press; 2008: 141.

⁵ 9 Del.C. § 330

⁶ 9 Del.C. § 101

⁷ 9 Del.C. § 1146

⁸ 9 Del.C. § 1116

⁹ 9 Del.C. § 4102 - 4110

¹⁰ 9 Del.C. § 7001 - 7003

¹¹ <https://stateplanning.delaware.gov/lup/municipalities.shtml>. There are over 200 unincorporated—or informal—municipalities that have no legal existence and hold no power. https://en.wikipedia.org/wiki/Category:Unincorporated_communities_in_Delaware_by_county

¹² <https://dhss.delaware.gov/dhss/admin/dhssmiss.htm>

¹³ 16 Del.C. § 101

¹⁴ 16 Del.C. § 122

¹⁵ 16 Del.C. § 126

¹⁶ Title 16, Part I, Chapter 1, Subchapter 2, Section 122

¹⁷ 16 Del.C. § 103

¹⁸ Id.

¹⁹ 16 Del.C. § 104

²⁰ 16 Del.C. § 104

²¹ 16 Del.C. § 104

²² Id.

²³ 16 Del.C. § 301

²⁴ Id.

²⁵ Id.

²⁶ Id. Historically, a port physician is a doctor assigned to a seaport, responsible for examining arriving passengers and crew members to check for contagious diseases.



²⁷ Id.

²⁸ Id.

²⁹ 16 Del.C. § 302

³⁰ 16 Del.C. § 127

³¹ 16 Del C. § 303

³² 16 Del. Section 128