



HENRY McMASTER  
GOVERNOR

March 13, 2024

Director Edward Simmer, M.D.  
South Carolina Department of Health  
and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201

Director Kim Stenson  
South Carolina Emergency Management  
Division  
2779 Fish Hatchery Road  
West Columbia, South Carolina 29172

Dear Gentlemen:

As you are aware, the Senate Medical Affairs Committee is currently considering S. 975, legislation which primarily seeks to prohibit public and private entities from mandating “novel vaccines.”

Although it is important to point out that under existing law—even during a declared public health emergency—state public health officials cannot mandate or administer vaccinations or treatment without consent, S.C. Code Ann. § 44-4-520(B), I am particularly concerned that other, less notable provisions of S. 975 could cripple South Carolina’s ability to respond promptly and appropriately to future public health threats and potentially place innocent lives at risk. More specifically, S. 975 proposes unnecessarily amending and eliminating certain provisions of the South Carolina Homeland Security Act and the Emergency Health Powers Act, which the General Assembly adopted in the wake of the September 11, 2001 terrorist attacks.

As a general rule, placing overbroad restrictions on the authority of public health officials, law enforcement officers, first responders, and emergency management professionals responding to emerging threats and disasters—whether public health or otherwise—is a bad idea. Accordingly, for purposes of informing further analysis of S. 975, I am requesting that you provide an assessment of the aforementioned legislation and any agency-specific issues or implementation concerns associated with the same. *See* S.C. Const. IV, § 17; S.C. Code Ann. §§ 1-1-840, 1-3-10.

Thank you in advance for your assistance with this matter. Should you have any questions, please do not hesitate to call on me.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Henry McMaster".

Henry McMaster



Healthy People. Healthy Communities.

Edward D. Simmer, MD, MPH, DFAPA  
Director

March 13, 2024

The Honorable Henry D. McMaster  
Office of the Governor  
1100 Gervais Street  
Columbia, SC 29201

**RE: S. 975**

Dear Governor McMaster:

I am writing in response to your request for our assessment of the potential impact to the State's ability to respond to future public health threats should the above-referenced bill become law. Under current South Carolina law, the General Assembly provides the South Carolina Department of Health and Environmental Control (the "Department") authority to (1) take action necessary to prevent a public health emergency from occurring and (2) to respond to a public health emergency if it cannot be prevented. In sum, if the changes contemplated by S.975 are enacted, the Department will not be able to adequately prevent public health emergencies or respond to such emergencies when they occur.

### **QUALIFYING HEALTH CONDITION**

As you are aware, for the Governor to declare a public health emergency, there must first be a "qualifying health condition." If S.975 is adopted as written, natural disasters, widespread illnesses, and serious economic impact to the agricultural sector, including food supply, would no longer be qualifying health conditions.

### **Natural Disaster**

Section 6 proposes to revise Section 44-4-130(R) by removing "natural disaster" from the list of items that constitute a "qualifying health condition." The Governor would no longer have the ability to declare a public health emergency in the event of a major flood, earthquake, or any other natural disaster. Examples of emergency health powers that may need to be exercised in such disasters include, but are not limited, to:

- Powers over dangerous facilities and materials – A chemical or radiological leak from a facility could result from an earthquake or flood. This power ensures such facilities are properly



evacuated, closed and decontaminated when there is reasonable cause to believe that it may endanger the public health.

- Powers and duties regarding the safe disposal of human remains – Unfortunately, mass casualties could result from a natural disaster. This power allows the Department to coordinate safe disposal of human remains.

### **Widespread Illness**

Section 6 also proposes to revise Section 44-4-130(R) by removing “widespread illness” from the list of items that constitute a “qualifying health condition.” The Governor would no longer have the authority to declare a public health emergency when there is widespread illness in a particular area in the state, such as an outbreak of measles or Ebola or Zika unless those outbreaks were considered “epidemic or pandemic” diseases. In essence, the change would eliminate the ability to activate emergency public health powers to address a South Carolina-specific disease outbreak.

### **Animals and Food Supply**

Section 6 also proposes to revise Section 44-4-130(R) by removing a “serious economic impact to the agricultural sector, including food supply” from the list of items that constitute a “qualifying health condition.” While this area is not directly within the Department’s authority, any impact to the food supply could have a significant effect on public health.

### **CONTAGIOUS DISEASES**

S.975 would also impact the Department’s ability to protect the public health against contagious diseases before and after a public health emergency is declared by the Governor.

### **The Department Cannot Mandate Vaccination or Treatment**

Each year, the Department investigates thousands of potential cases of infectious disease in South Carolina. When disease is present, the Department cannot require those who are exposed to be vaccinated or sick to accept treatment. The law does not allow such mandates to be issued by the Department. As a result, the primary tool we have to control the spread of an infectious disease and stop a public health emergency from occurring is the power to quarantine or isolate individuals and groups of individuals who have been exposed to or have a contagious disease.

### **Quarantine and Isolation**

Quarantine separates and restricts the movement of people who have been exposed to a contagious disease to see if they become sick. The time it takes for a disease to express itself in symptoms or by testing varies by disease. For instance, a person exposed to measles is expected to show symptoms within an average of seven to 14 days of exposure, and as long as twenty-one days. Someone exposed to Ebola may not show symptoms for up to twenty-one (21) days after exposure.

Isolation, on the other hand, separates people who are confirmed to have a contagious disease or who are symptomatic of the disease from people who are not sick. If a person who is in quarantine becomes sick, that person would then be isolated. To prevent the spread of disease, people should

remain isolated until they can no longer infect others. How long one remains in isolation will depend upon the disease. For example, a person with measles is generally no longer contagious four days after the rash first appears. A person with tuberculosis can remain infectious for several months.

In most cases, people voluntarily agree to isolation or quarantine. If they refuse, or if they violate the terms of their voluntary agreement, the Department may order that the person be isolated or quarantined immediately but must then petition the court for an order of isolation or quarantine. The person subject to the order may also petition the court for a hearing at any time.

**During the COVID pandemic, the Department did not issue any orders for isolation or quarantine, nor did we petition the court for any such orders.** In fact, despite receiving on average 26,000 non-COVID disease reports each year that have the potential for isolation and quarantine, in the last two years the Department has only petitioned the court once for an order of isolation, and that case involved a person with tuberculosis who would not agree to stay isolated in his home.

The procedures that must be followed for isolation and quarantine orders, including judicial review, are set forth in the Emergency Health Powers Act, and the law requires those procedures be followed even for orders issued before a public health emergency is declared by the Governor. As mentioned above, all actions by the Department are subject to review by a court.

The following changes contemplated by S.975 are especially concerning when it comes to the Department's ability to quarantine and isolate:

- Section 8 would revise 44-4-500 to require the Department to use every available means to prevent the transmission of infectious disease and to ensure that all "confirmed" cases of the infectious disease are subject to proper control and treatment. This would remove the Department's ability to quarantine individuals who have been exposed to a disease but are not yet sick. The word "confirmed" also presents a problem related to isolation because individuals suspected of being sick should be isolated pending confirmatory results.
- Section 9 would revise 44-4-510(A)(2) so that in a public health emergency the Department could not quarantine or isolate an individual who refuses to be tested for the infectious disease unless that person is symptomatic, and it eliminates the Department's ability to quarantine or isolate someone refusing testing because there is uncertainty about whether the person "has been exposed to" an infectious disease.
- Section 11 would revise 44-4-530(B)(4) to state that an "asymptomatic quarantined individual must be confined for no more than five days." Such a limitation would not allow the quarantine period to be determined by the disease's incubation period. For example, the time from exposure to when signs or symptoms of Ebola appear (the incubation period) is 2 to 21 days. That means that a person could have been exposed to Ebola and the disease may be incubating inside the person for up to 21 days before the person shows any symptoms. Under this bill, a person exposed to Ebola would have to be released from quarantine at day 5.

A few examples of diseases with incubation periods beyond five (5) days are as follows:

- Measles
  - Meningococcal (bacterial meningitis)
  - Plague
  - Typhoid fever
  - Avian flu
- 
- Section 11 would revise 44-4-530(B)(4) to prevent the Department from moving people from quarantine to isolation when they are “reasonably believed to be infected.” For example, if a person is in quarantine for having been exposed to measles and then develops a rash, they should immediately be placed in isolation; however, the changes to this subsection would require that the person first receive a confirmation test that they are positive for measles. Confirmatory tests often cannot be done immediately but may take a day or more to get results from a lab.
  - Section 11 would revise 44-4-530(B)(5) to require that people who are in isolation be immediately released if they no longer have symptoms or within 10 days of symptom onset, whichever is sooner. Setting an arbitrary date by which a person must be released from isolation is dangerous because people may still be able to spread some diseases well after 10 days of symptom onset. People may also be able to spread disease after symptoms subside. For example, a person may remain infectious with TB for several months. If they had to be released from isolation after 10 days, they would be free to interact with others and spread TB. The length of time a person may remain infectious varies by infectious disease. The following are a few examples of diseases for which a person will remain infectious beyond ten (10) days:
    - Group A strep (which can lead to flesh-eating bacteria)
    - E. coli
    - Viral hemorrhagic fevers (e.g., Ebola)
    - Smallpox
  - Section 11 would revise 44-4-530(D)(2) to remove the requirement that no one other than a person authorized by the Department may enter into an isolation or quarantine premises. This provision is present to prevent the spread of a disease. If this provision were to become law, the Department would be unable to prevent exposure to infectious disease and, thus, the spread of disease.
  - Section 12 would revise 44-4-540 to essentially remove the process by which isolation and quarantine is accomplished, including the provisions requiring the Department to request a hearing before the court. These revisions eliminate many of the processes and procedures that protect people’s due process rights, including requiring the Department to obtain a court order to continue an isolation or quarantine. It also removes the requirements that

the Department follow these processes and procedures in times other than public health emergencies. Without these stated processes and procedures, it is unclear how the Department would go about quarantining or isolating someone or how that person would obtain judicial review of such an order when such action is taken.

## **VACCINES**

As noted above, the Department does not have the authority to mandate a person be vaccinated. That said, vaccines are effective in preventing disease, and many citizens desire vaccination. The following changes contemplated by S.975 are especially concerning when it comes to the Department's ability to provide vaccine during a public health emergency:

- Section 3 would add 44-1-55(B) and prohibit employers from mandating "novel vaccines" for certain employees. Novel vaccines may be developed in response to an emerging pathogen. Prohibiting healthcare facilities from mandating "novel vaccines" for workers could severely limit the ability to prevent the spread of infectious disease among vulnerable people, such as patients in hospitals and residents in nursing homes.
- Section 3 would add 44-1-55(C) to provide "no employer may require their employees to receive any vaccine which is not mandated for employment by the Department of Public Health." Each employer's situation is unique and their decision to require employees to be vaccinated as a condition of employment may not correlate to why Department employees would need to be vaccinated.
- Section 7 would revise 44-4-330 to eliminate the Department's authority to purchase and distribute a vaccine that is under an emergency use authorization issued by the federal government. During the COVID pandemic, the Department obtained COVID vaccines and distributed them to others in the community to make them available to people who chose to be vaccinated. Should another global pandemic occur, and a vaccine be developed under an emergency use authorization, the Department would have no authority to distribute such vaccines in our State.
- Section 10 would revise 44-4-520(B)(3) to prohibit the Department from administering any vaccine that is considered "gene therapy." This would prevent the use in a public health emergency of a FDA-approved or FDA-authorized treatment for an emerging public health threat.

## **ASSISTANCE FROM LAW ENFORCEMENT**

During and before a public health emergency the Department may, on rare occasion, need the assistance of law enforcement in serving and carrying out public health orders. S.975 would revise 44-1-100 related to assistance from peace and health officers in carrying out the Department's orders. The bill, as amended, removes any requirement that law enforcement assist the Department in carrying out public health orders except during a governor-declared public health emergency, and in that case, it would be voluntary assistance.

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The Department relies on law enforcement officers to assist with non-compliant patients who refuse to remain isolated and are hostile. Without law enforcement these patients may venture out into the community, potentially spreading infectious disease to other citizens.

**ASSISTANCE OF MEDICAL EXAMINERS/CORONERS DURING PUBLIC HEALTH EMERGENCIES**

Section 13 of S.975 would revise 44-4-570(D)(3) to remove the protection against liability for medical examiners and coroners who are performing services after having been appointed by the Department to assist in a public health emergency. Such liability exposure may dissuade these professionals from assisting the Department during public health emergencies.

In sum, thank you for the opportunity to provide these comments regarding S.975 and its potential impact on the ability of the Department to prevent and respond to a public health emergency. If we can provide additional information or assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Edward D. Simmer". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Edward D. Simmer, M.D.

cc: Kim Stenson, Director, SC Emergency Management Division

# The State of South Carolina Military Department



## OFFICE OF THE ADJUTANT GENERAL

R. Van McCarty  
MAJOR GENERAL  
THE ADJUTANT GENERAL

March 13, 2024

The Honorable Henry McMaster  
Governor of South Carolina  
State House  
1100 Gervais Street  
Columbia, South Carolina 29201

RE: Senate Bill 975

Dear Governor McMaster:

As you are aware, the South Carolina Emergency Management Division (“SCEMD”) leads the State Emergency Response Team (“SERT”) in planning for, responding to, and recovering from all hazards including, but not limited to, natural disasters. SCEMD also works closely with the South Carolina Department of Health and Environmental Control (“DHEC”) to facilitate DHEC’s response to public health emergencies. Without regard to Covid-19, SCEMD would like to emphasize the gaps that Senate Bill 975 creates in SCEMD’s mission to save lives and protect property in natural disasters. While SCEMD understands the need for balancing authority and responsibility among state agencies, SCEMD contends that the consequences that will result from bill S.975 as currently drafted are likely to prove devastating to the citizens and visitors to our State.

Pursuant to the Emergency Health Powers Act (Title 44, Chapter 4, SC Code of Laws), DHEC is authorized to take the following actions in response to health and human safety threats resulting from natural disaster.

- Exercise power over dangerous facilities and materials (radiation and hazardous chemicals)
- Use a health care facility or its services to respond to a public health emergency
- Safely dispose of human remains, specifically, take control of contaminated or infectious human remains and order the disposal of same
- Purchase and distribute pharmaceutical agents or medical supplies
- Isolate, quarantine, or test contagious individuals
- Vaccinate and treat individuals
- Waive licensing fees and requirements for out of state health workers

**Emergency Management Division**  
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Bill S.975 removes “natural disasters” as a basis for the activation of the Emergency Health Powers Act, thereby preventing DHEC from exercising its emergency powers and working with SCEMD as required by the South Carolina Emergency Operations Plan to support local governments with critical life-safety missions during and after natural disasters.

South Carolina has experienced 11 federally declared emergencies or disasters since 2014, including, but not limited to, the following natural disasters: 2014 ice storm, severe storms and floods of October 2015, Hurricane Matthew in 2016, Hurricane Irma in 2017, Hurricane Florence in 2018, Hurricane Dorian in 2019, February 2020 severe storms, April 2020 tornadoes, Hurricane Ian in 2022, and Tropical Storm Idalia in 2023. Based on the number of smaller disasters South Carolina experiences, it is not a question of “if” South Carolina experiences a catastrophic event, it’s a question of “when.” While most types of natural disasters are possible, hurricanes are the most likely disaster South Carolina will experience. In recent disasters, South Carolina has largely been spared overwhelming death tolls. Given the increased population living on our coast and the well-established rates of non-compliance with evacuation orders, it is reasonable to anticipate more casualties would result from today’s disaster than in disasters past.

While local governments have the responsibility to and are best suited to respond immediately to a natural disaster, larger disasters quickly deplete the resources and capability of local government requiring the state government to step in and provide services that save lives and protect property. Should we suffer a more catastrophic event, such as a Category 3 or 4 hurricane or a large earthquake, it is likely that South Carolina will need DHEC to coordinate with coroners, medical examiners, and funeral directors for the proper handling of human remains. Federal assets are not an option unless the State’s resources are insufficient to address local needs, and federal assets are not immediately available even if deployed.

All hazards encompassed in a hurricane can trigger other catastrophes (“cascading disasters” or “disasters within the disaster”). Examples include damage to a nuclear facility that results in an environmental release and hazardous chemical spills. SCEMD does not employ, nor is it funded to employ or retain properly licensed, medical professionals or chemical and radiation experts to respond to such events. SCEMD must rely on DHEC to provide such services when they are needed. If medical professionals, specialists, and subject matter experts come from other states to assist South Carolina, as they often do through the Emergency Management Assistance Compact (“EMAC”) (Section 25-9-420, *et seq.*, South Carolina Code of Laws), SCEMD does not have the authority to waive licensing requirements and relies on DHEC to provide those waivers. Furthermore, even if assistance can be procured through state contracts, those vendors do not have the authority to take possession of human remains, including contaminated human remains.

The need to provide shelter for displaced persons during and after a hurricane can result in potential exposure of individuals to contagious illnesses. Currently, Florida has seen an increase in measles. Should measles continue to spread, South Carolina could experience an increase in this dangerous, contagious illness as hurricane season (June 1- November 30) approaches. Congregate sheltering of displaced persons could expose many individuals to measles at one

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time. As currently written, bill S.975 would prohibit DHEC from vaccinating, testing, treating, or quarantining individuals with measles.

SCEMD has reviewed bill S.975 and concurs that eliminating “natural disasters” as a basis for public health emergencies would prevent DHEC from exercising its emergency powers to support local governments with critical life-safety missions during and after natural disasters. Specifically, DHEC could not assist with the clean-up of radioactive waste or hazardous chemicals in the event of an environmental release, nor could it or dispose of contaminated or infectious human remains. Furthermore, DHEC could not waive licensing fees and requirements for out of state healthcare workers coming to our State to aid in the recovery of natural disasters. Without the ability to provide this support to our counties and municipalities, the State risks the health and safety of its citizens in every natural disaster.

Careful consideration and analysis of just a few realistic scenarios exposes some fundamental gaps created by bill S.975 that are likely not intended or desirable. The State would be unable to respond to many public health and safety needs during and after a natural disaster without alternate or additional legislation to fill those fundamental, devastating gaps that bill S.975 creates. The State would be unable to satisfy its statutory mission if the bill restricts DHEC’s authority to perform the tasks required of it during a natural disaster response and fails to identify what agency will provide those vital, life-saving services going forward.

Sincerely,



Kim Stenson  
Director

cc: Director Edward Simmer, M.D.  
South Carolina Department of Health and Environmental Control