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## EDITORIALS AND COMMENTARIES

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### The Model State Emergency Health Powers Act

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The federal Centers for Disease Control and Prevention (CDC) has circulated to all 50 states a draft of a model act intended to ensure that adequate legal authorities are in place to allow public health officials to respond appropriately to a biological, chemical, or nuclear act of terrorism. The act, if adopted into law in the various states, would in part establish reporting by pharmacies to the public health authority and, on the declaration of a public health emergency by the governor, allow public health officials to take control of various types of facilities, quarantine premises and isolate individuals, and administer mandatory vaccinations. There is no doubt that many, if not all, of these powers will be necessary in the case, for example, of a terrorist attack involving small pox.

In New York State, however, there is an existing body of law that should not be undone, but rather should be augmented. For example, the state Executive Law, in Article 2-B, currently provides a structure for emergency response. Section 20 of that article makes it clear that it is local government and local emergency service organizations that have an essential role as the first line of defense in times of emergency and disaster. The Executive Law authorizes not only the governor to declare a state of disaster emergency, but also local chief executives, including the mayor of New York City, to declare a local state of emergency. Many of the powers addressed in the model act already exist in Article 2-B of the Executive Law.

Furthermore, by making the utilization of many of the powers contingent on the declaration of an emergency, the model act focuses too much on responding to an emergency as opposed to preventing an emergency. For example, the isolation of individuals or the quarantine of premises are powers that are currently vested in public health officers so that they may stem the tide of illness before it progresses to the point of epidemic, disaster, or emergency. Any amendment of the Executive Law with regard to emergency response should make it clear that it is not intended to limit any authority or power otherwise vested by law in a local or state official.

The model act, understandably, does not take cognizance of the special status afforded to New York City by many provisions of the existing state public health law. Importantly, large portions of Public Health Law Articles 13 and 21, relating to the control of nuisances and communicable diseases, respectively, do not apply in New York City. Instead, pursuant to the provisions of the city charter and administrative code, these areas of public health jurisdiction are largely governed by the New York City Health Code, promulgated by the city's Board of Health. While it is likely that public health powers need to be clarified and enhanced by amending existing laws, this public health structure, which has served the needs of the city well, should not be altered.