

ASSEMBLY, No. 4813

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED OCTOBER 19, 2020

Sponsored by:

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District 37 (Bergen)

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District 13 (Monmouth)

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Assemblywoman Dunn, Assemblymen Caputo and Bergen

SYNOPSIS

Makes information related to public health emergency accessible with certain limited exceptions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/7/2020)

1 AN ACT concerning open public records requests related to a public
2 health emergency, and amending P.L.2005, c.222.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.2005, c.222 (C.26:13-2) is amended to read
8 as follows:

9 2. As used in this act:

10 "Biological agent" means any microorganism, virus, bacterium,
11 rickettsiae, fungus, toxin, infectious substance, or biological
12 product that may be naturally occurring or engineered as a result of
13 biotechnology, or any naturally occurring or bioengineered
14 component of any such microorganism, virus, bacterium,
15 rickettsiae, fungus, infectious substance, or biological product,
16 capable of causing death, disease, or other biological malfunction in
17 a human, an animal, a plant, or another living organism.

18 "Bioterrorism" means the intentional use or threat of use of any
19 biological agent, to cause death, disease, or other biological
20 malfunction in a human, animal, plant, or other living organism, or
21 degrade the quality and safety of the food, air, or water supply.

22 "Chemical weapon" means a toxic chemical and its precursors,
23 except where intended for a lawful purpose as long as the type and
24 quantity is consistent with such a purpose. Chemical weapon
25 includes, but is not limited to: nerve agents, choking agents, blood
26 agents, and incapacitating agents.

27 "Commissioner" means the Commissioner of Health, or the
28 commissioner's designee.

29 "Contagious disease" means an infectious disease that can be
30 transmitted from person to person.

31 "Department" means the Department of Health.

32 "Health care facility" means any non-federal institution, building
33 or agency, or portion thereof whether public or private for profit or
34 nonprofit that is used, operated or designed to provide health
35 services, medical or dental treatment or nursing, rehabilitative, or
36 preventive care to any person. Health care facility includes, but is
37 not limited to: an ambulatory surgical facility, home health agency,
38 hospice, hospital, infirmary, intermediate care facility, dialysis
39 center, long-term care facility, medical assistance facility, mental
40 health center, paid and volunteer emergency medical services,
41 outpatient facility, public health center, rehabilitation facility,
42 residential treatment facility, skilled nursing facility, and adult day
43 care center. Health care facility also includes, but is not limited to,
44 the following related property when used for or in connection with
45 the foregoing: a laboratory, research facility, pharmacy, laundry

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 facility, health personnel training and lodging facility, patient, guest
2 and health personnel food service facility, and the portion of an
3 office or office building used by persons engaged in health care
4 professions or services.

5 "Health care provider" means any person or entity who provides
6 health care services including, but not limited to: a health care
7 facility, bioanalytical laboratory director, perfusionist, physician,
8 physician assistant, pharmacist, dentist, nurse, paramedic,
9 respiratory care practitioner, medical or laboratory technician, and
10 ambulance and emergency medical workers.

11 "Infectious disease" means a disease caused by a living organism
12 or other pathogen, including a fungus, bacteria, parasite, protozoan,
13 virus, or prion. An infectious disease may, or may not, be
14 transmissible from person to person, animal to person, or insect to
15 person.

16 "Isolation" means the physical separation and confinement of an
17 individual or groups of individuals who are infected or reasonably
18 believed to be infected, on the basis of signs, symptoms or
19 laboratory analysis, with a contagious or possibly contagious
20 disease from non-isolated individuals, to prevent or limit the
21 transmission of the disease to non-isolated individuals.

22 "Local health agency" means a county, regional, municipal, or
23 other governmental agency organized for the purpose of providing
24 health services, administered by a full-time health officer and
25 conducting a public health program pursuant to law.

26 "Local Information Network and Communications System
27 Agency" or "LINCS agency" means the lead local public health
28 agency in each county or identified city, as designated and
29 determined by the commissioner pursuant to section 21 of this act,
30 responsible for providing central planning, coordination, and
31 delivery of specialized services within the designated county or
32 city, in partnership with the other local health agencies within that
33 jurisdiction, in order to prepare for and respond to acts of
34 bioterrorism and other forms of terrorism or other public health
35 emergencies or threats, and to discharge the activities as specified
36 under this act.

37 "Microorganism" includes, but is not limited to, bacteria, viruses,
38 fungi, rickettsiae, or protozoa.

39 "Nuclear or radiological device" means: any nuclear device
40 which is an explosive device designed to cause a nuclear yield; an
41 explosive radiological dispersal device used directly or indirectly to
42 spread radioactive material; or a simple radiological dispersal
43 device which is any act, container or any other device used to
44 release radiological material for use as a weapon.

45 "Overlap agent or toxin" means: any microorganism or toxin that
46 poses a risk to both human and animal health and includes:

47 Anthrax - *Bacillus anthracis*

- 1 Botulism - Clostridium botulinum toxin, Botulinum neurotoxins,
- 2 Botulinum neurotoxin producing species of Clostridium
- 3 Plague - Yersinia pestis
- 4 Tularemia - Francisella tularensis
- 5 Viral Hemorrhagic Fevers - Ebola, Marburg, Lassa, Machupo
- 6 Brucellosis- Brucellosis species
- 7 Glanders - Burkholderia mallei
- 8 Melioidosis - Burkholderia pseudomallei
- 9 Psittacosis - Chlamydia psittaci
- 10 Coccidioidomycosis - Coccidioides immitis
- 11 Q Fever - Coxiella burnetii
- 12 Typhus Fever - Rickettsia prowazekii
- 13 Viral Encephalitis - VEE (Venezuelan equine encephalitis virus),
- 14 EEE (Eastern equine encephalitis), WEE (Western equine
- 15 encephalitis)
- 16 Toxins - Ricinus communis, Clostridium perfringens, Staph.
- 17 Aureus, Staphylococcal enterotoxins, T-2 toxin, Shigatoxin
- 18 Nipah - Nipah virus
- 19 Hantavirus - Hantavirus
- 20 West Nile Fever - West Nile virus
- 21 Hendra - Hendra virus
- 22 Rift Valley Fever - Rift Valley Fever virus
- 23 Highly Pathogenic Avian Influenza
- 24 "Personal identifying information" means information that may
- 25 be used, alone or in conjunction with any other information
- 26 contained within the same record, to identify a specific individual
- 27 and includes, but is not limited to, the name, address, email address,
- 28 social media address, telephone number, fax number, date of birth,
- 29 social security number, driver's license number, official State issued
- 30 identification number, employer or taxpayer number, place of
- 31 employment, telephone number of employment, employee
- 32 identification number, school address, school phone number,
- 33 student identification number, mother's maiden name, unique
- 34 biometric data, such as fingerprint, voice print, retina or iris image
- 35 or other unique physical representation, unique electronic
- 36 identification number, medical diagnoses, treatments or other
- 37 medical information concerning an identifiable person.
- 38 "Public health emergency" means an occurrence or imminent
- 39 threat of an occurrence that:
- 40 a. is caused or is reasonably believed to be caused by any of
- 41 the following: (1) bioterrorism or an accidental release of one or
- 42 more biological agents; (2) the appearance of a novel or previously
- 43 controlled or eradicated biological agent; (3) a natural disaster; (4) a
- 44 chemical attack or accidental release of toxic chemicals; or (5) a
- 45 nuclear attack or nuclear accident; and
- 46 b. poses a high probability of any of the following harms: (1) a
- 47 large number of deaths, illness, or injury in the affected population;
- 48 (2) a large number of serious or long-term impairments in the

1 affected population; or (3) exposure to a biological agent or
2 chemical that poses a significant risk of substantial future harm to a
3 large number of people in the affected population.

4 "Quarantine" means the physical separation and confinement of
5 an individual or groups of individuals, who are or may have been
6 exposed to a contagious or possibly contagious disease and who do
7 not show signs or symptoms of a contagious disease, from non-
8 quarantined individuals, to prevent or limit the transmission of the
9 disease to non-quarantined individuals.

10 "Toxin" means the toxic material of plants, animals,
11 microorganisms, viruses, fungi, or infectious substances, or a
12 recombinant molecule, whatever its origin or method of production,
13 including:

14 a. any poisonous substance or biological product that may be
15 engineered as a result of biotechnology or produced by a living
16 organism; or

17 b. any poisonous isomer or biological product, homolog, or
18 derivative of such a substance.

19 (cf: P.L.2012, c.17, s.356)

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21 2. Section 26 of P.L.2005, c.222 (C.26:13-26) is amended to
22 read as follows:

23 26. Any correspondence, records, and reports **【and medical**
24 **information】** made, maintained, received or filed pursuant to this
25 act shall **【not】** be **【considered a public or government record】**
26 subject to disclosure under P.L.1963, c.73 (C. 47:1A-1 et seq.) and
27 P.L.2001, c.404 (C.47:1A-5 et al.).

28 At no time shall personal identifying information, as defined in
29 section 2 of P.L.2005, c.222 (C.26:13-2), be considered a public or
30 government record under P.L.1963, c.73 (C.47:1A-1 et seq.) and
31 P.L.2001, c.404 (C.47:1A-5 et al.).

32 The records custodian of a LINCOS agency, as defined in section
33 2 of P.L.2005, c.222 (C.26:13-2), may deny access to those portions
34 of any correspondence, record, or report that relate to bioterrorism.

35 (cf: P.L.2005, c.222, s.26)

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37 3. This act shall take effect immediately.

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STATEMENT

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42 Under current law, any correspondence, record, report and
43 medical information made, maintained, received, or filed pursuant
44 to the Emergency Health Powers Act is not considered a public or
45 government record, and therefore not accessible under an open
46 public records request. Under this bill, any correspondence,
47 records, and reports made, maintained, received or filed pursuant to

1 the Emergency Health Powers Act will be subject to disclosure
2 under the law commonly known as the open public records act.

3 The bill also specifies that personal identifying information will
4 not be considered a public or government record. Under the bill,
5 “personal identifying information” means information that may be
6 used, alone or in conjunction with any other information contained
7 within the same record, to identify a specific individual and
8 includes, but is not limited to, the name, address, email address,
9 social media address, telephone number, fax number, date of birth,
10 social security number, driver's license number, official State issued
11 identification number, employer or taxpayer number, place of
12 employment, telephone number of employment, employee
13 identification number, school address, school phone number,
14 student identification number, mother's maiden name, unique
15 biometric data, such as fingerprint, voice print, retina or iris image
16 or other unique physical representation, unique electronic
17 identification number, medical diagnoses, treatments or other
18 medical information concerning an identifiable person.

19 The bill also provides that records custodians of a Local
20 Information Network and Communications (LINCS) agency may
21 deny access to those portions of any correspondence, record, or
22 report that relate to bioterrorism. A LINCS agency is the lead
23 public health agency in each county or identified city. The agency
24 is responsible for central planning, coordination and delivery of
25 specialized services within the designated county or city, in
26 partnership with the other local health agencies in that jurisdiction,
27 in order to prepare for and respond to acts of bioterrorism and other
28 forms of terrorism, or other public health emergencies or threats.