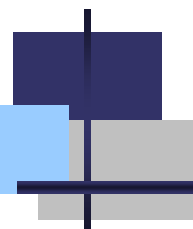


# Gap Analysis: Comparing the Model State Emergency Health Powers Act with Corresponding New York State and New York City Statutory Authority



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New York State Bar Association  
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# Project Description

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- Importance of examining and evaluating laws for emergency preparedness [IOM, CDC Symposium]
- MSEHPA as a template for examining laws and facilitating reform [Gostin et al.]
- Specific need to modernize NY State and City laws [Lipsman article]
- Gap Analysis to facilitate comparisons between the MSEHPA and NY laws [Center for Health Policy]





# Gap Analysis

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- Side-by-side comparison of specific sections of NY laws to the MSEHPA
  - Language of the MSEHPA
  - Current NY State and City laws
  - Changes to bring NY law in conformity with the MSEHPA
- Framework for consideration of legislative modernization
- Successful examples

# Need for Gap Analysis at State and City Levels

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- Concerns among stakeholders that limitations exist in State and City laws
- Framework for consideration
  - Identify limitations
  - Memorialize limitations for legislative actors
  - Focus reforms on needed changes

# Gap Analysis Methodology



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- 1. Examined laws relevant to MSEHPA provisions**
- 2. Analyzed language of NY State and City laws in comparison to MESHPA language**
- 3. Disseminated to key actors for comments, additions and suggestions**
- 4. Presenting findings for comment - today and online**

# Gap Analysis Results – Isolation

MSEHPA	New York State Law	New York City Law
<p>§ 104(h): <b>“Isolation”</b> is the physical <b>separation</b> and <b>confinement...</b> <b>infected</b> with a contagious or possibly contagious disease from non-isolated individuals, <b>prevent</b> or limit <b>the transmission of the</b> disease to non-isolated individuals.</p>	<p>10 NYCRR § 2.25(d): <b>Isolation</b> shall consist of the <b>separation</b> from other persons, in such places, under such conditions, and for such time, as will <b>prevent transmission of the infectious</b> agent, of persons known to be ill or suspected of being infected.</p>	<p>24 RCNY: Health Code § 11.01(h): Isolate means to <b>confine</b> to premises or, in an institution, to a room or ward pursuant to §11.57, under such conditions as will <b>prevent the</b> conveyance of the pathogenic organism from a case or carrier to a person who is susceptible or who may spread the disease.</p>

# Gap Analysis Results – Identification of Individuals

MSEHPA	New York State Law	New York City Law
<p>§ 302(a): Identification of Individuals. ... the public health authority <b>shall</b> identify all <b>individuals</b> thought to have been <b>exposed to</b> an illness or health condition <b>that may be a potential cause of a public health emergency.</b></p>	<p>Public Health Law § 2100(1): Every local board of health and every health officer shall guard against the introduction of such communicable diseases as are designated in the sanitary code, by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or <b>exposed to</b> such diseases.</p>	<p>24 RCNY Health Code § 11.03(b): An outbreak or suspected outbreak of any disease or condition... <b>which may be a danger to public health,</b> occurring in three or more persons, or any unusual manifestation of a disease in an <b>individual, shall</b> be reported to the Department immediately.... The Department shall conduct such investigation ... to ascertain sources or causes of infection, to discover contacts and unreported cases, and shall take such steps as may be necessary to prevent morbidity and mortality.</p>



# Gap Analysis Results – Liability

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MSEHPA	New York State Law	New York City Law
<p>§ 804: <b>Neither the State, its political subdivisions, nor, except in cases of gross negligence or willful misconduct, ...any other State or local official...is liable for the death of or any injury to persons, or damage to property, as a result of complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant to this Act during a state of public health emergency.</b></p>	<p>Executive Law § 25(5): Use of local government resources in a disaster: <b>A political subdivision shall not be liable for any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of any officer or employee in carrying out the provisions of this section.</b></p>	<p>Executive Law § 25(5): Use of local government resources in a disaster [<i>see NY state law for necessary changes</i>]</p>





# Gap Analysis Limitations

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- **Serves ONLY as a guide**
  - Does *not* make recommendations for law reform
  - Should *not* be viewed as an endorsement of any specific reforms
- **Reforming State or City legislation requires opening statutes to amendment**
  - Partnerships for Modernization?
  - Legislative Champion?
  - Political considerations? (e.g., fear of legislative “backsliding”)





# Moving Forward...

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- **Access Gap Analysis at:**  
[http://www.nursing.columbia.edu/chphsr/projects/law/public\\_health.html](http://www.nursing.columbia.edu/chphsr/projects/law/public_health.html)
- **Address questions, concerns, additions and suggestions to me at:**  
[jg2849@columbia.edu](mailto:jg2849@columbia.edu)
- **Thank you.**