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HOUSE BILL 1442

State of Washington 67th Legislature 2021 Regular Session

By Representatives Chase, Sutherland, Caldier, Schmick, Eslick, and Kraft

Read first time 02/01/21. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to epidemic and pandemic preparedness; amending
2 RCW 70.26.020; adding new sections to chapter 70.26 RCW; and
3 repealing RCW 70.26.010, 70.26.030, 70.26.040, 70.26.050, 70.26.060,
4 and 70.26.070.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.26
7 RCW to read as follows:
8 (1) The legislature finds that:
9 (a) Current definitions by the world health organization and the
10 centers for disease control and prevention for epidemic and pandemic
11 adhere to a narrowly defined criteria that are delineated as
12 catastrophic and noncatastrophic, novel or variant. Inherent in
13 "epidemic and pandemic preparedness" is the tenet that epidemic and
14 pandemic illnesses require a different response than annual, seasonal
15 influenza or seasonal viral diseases. Current definitions allow for
16 novel viruses to trigger an epidemic or pandemic label and prompt an
17 exaggerated response by health jurisdictions. Epidemic and pandemic
18 planning must take into account the severity of illness, mortality,
19 and morbidity, caused by disease causing agents or organisms as part
20 of a response strategy.

1 (i) The world health organization has changed the definitions of 2 influenza epidemics and influenza pandemics over the last 17 years. 3 These changes in definition have lowered the threshold for declaring 4 epidemics and pandemics around the world by national and local health 5 agencies.

6 (ii) From 2003 to 2009, the world health organization defined an 7 epidemic brought forth by a type A-influenza virus as following: "An 8 influenza pandemic occurs when a new influenza virus appears against 9 which the human population has no immunity, resulting in several, 10 simultaneous epidemics worldwide with enormous numbers of deaths and 11 illness."

12 (iii) On May 4, 2009, the world health organization altered the 13 definition to read as follows: "An influenza pandemic may occur when 14 a new influenza virus appears against which the human population has 15 no immunity."

16 (iv) The world health organization's definition on February 24, 17 2010, read: "An influenza pandemic occurs when a new influenza virus 18 emerges and spreads around the world, and most people do not have 19 immunity."

20 (v) The centers for disease control and prevention has followed 21 the world health organization's changes and applied them to their 22 definitions of epidemic and pandemic in the preparedness plans, 23 lowering thresholds for health emergency declarations.

24 (vi) On March 24, 2020, the centers for disease control and 25 prevention published guidelines that substantially altered how cause 26 of death is recorded exclusively for COVID-19, which had the effect 27 of quickly raising COVID-19 death rates. By August 23, 2020, the 28 centers for disease control and prevention was reporting 161,392 29 deaths under the new COVID-19-only guidelines. If evaluated under the 30 guidelines used for all other deaths, including deaths where any 31 other viral infection is present or a factor, the total COVID-19 32 deaths on August 23 would have been 9,684.

33 (vii) Recommendations from federal, private, state, or 34 international institutions regarding epidemic or pandemic 35 definitions, including guidelines on what qualifies as a death due to 36 an epidemic or pandemic illness, must be reviewed in a representative 37 manner prior to being accepted by the Washington state department of 38 health in order to ensure any change will benefit the people of the 39 state.

(viii) Changes in the definitions for epidemics and pandemics and guidelines for recording of deaths must be reviewed by members of the department of health, the general public, and members of the medical community who are not affiliated with the department of health in the state of Washington to account for the severity of the disease caused by a virus, transmissibility, the percentage of the population at risk of severe disease or fatality, and the role the disease or presence of the pathogen plays in any death.

(b) The response to the current outbreak of SARS-COV-2 has been unprecedented, causing disruptions to the constitutional rights, livelihoods, and freedoms guaranteed by the United States of America and Washington state Constitutions.

(c) Irreparable harm to the people and businesses in the state through extended use of blanket isolation, restrictions, and business and school closures has occurred due to the state of emergency declaration in 2020 and the implementation of strategies brought forth by the Washington state department of health. This approach is not sustainable or repeatable. Lessons learned must be used to create better strategies moving forward and for future epidemic or pandemic events.

(d) Recommendations regarding how best to avoid infection with SARS-COV-2 change frequently as new information and data are brought forth, and recommendations by national, state, and local government officials are often not based on well-tested scientific information, risk mitigation strategies, or cost/benefit analysis. Long-term face mask wearing, sanitizing of surfaces, and social distancing and restrictions have never been used to the extent or duration they are now for prevention of the spread of any infection and their effectiveness and safety when adopted by those in the general public who are symptom-free is now a matter of scientific debate.

(e) The use of PCR tests to define cases and drive responses and policies has proved highly problematic. Studies have shown false positives occur dependent upon the timing of the administration of the test and the number of cycles used to determine a positive result. It is now widely understood that diagnostic programs that rely exclusively on PCR tests to define a case are fundamentally flawed.

(i) The use of the number of people positive for a diagnostic test, that has been incorrectly defined as a "case," regardless of health status (asymptomatic, symptomatic, hospitalized, or deceased)

is counterproductive and does not provide accurate and actionable information for community health management.

(ii) Diagnostic test reporting, recommendations to local health authorities and government agencies, and decision making by health authorities must incorporate a balance of illness severity, prevalence of disease spread, risk mitigation strategies, and cost and benefit to communities in the reporting.

(iii) The Washington state department of health has the duty to review, analyze, and validate all diagnostic tests for accuracy, diagnostic usefulness to the medical and laboratory community.

(f) Close interactions are necessary for emotional, psychological, and physical health, as well as for immune health. It is well-established that individual immune health, natural individual immunity, and natural herd immunity depend upon frequent and varied exposures to microbes, including those that are potential pathogens. The current level of fear, oversanitation, and isolation cannot be sustained without harm to human health.

(g) Existing public health regulations include, but are not limited to, hand washing, adequate air quality in places of public accommodation, staying home from work or school when symptomatic, isolating the sick for diseases of public health significance, and other long-standing health measures proven to help reduce the spread of communicable infections, with minimal negative impact on business and society.

(h) No evidence exists that locking down the healthy, asymptomatic general population alters or affects the spread of a viral epidemic or pandemic disease. No evidence has been provided by the world health organization, the centers for disease control and prevention, and the Washington state department of health that wide-scale lockdowns or quarantines limit infectivity, morbidity, and mortality.

(i) Historically, epidemics and pandemics have impacted certain portions of the population more than others. When restrictive public health measures are used in a blanket fashion with the entire population rather than in a targeted fashion, the result can be economic and personal harm that outweighs any potential benefit.

(j) Existing public health policies do not include monitoring or distributing to medical and health professionals and the public information about nutrient and drug therapies that are rapidly developed and adopted by frontline and general practitioners in order

to prevent infection, prevent severe disease, and reduce fatalities. State public health agencies have historically deferred to the federal centers for disease control and prevention and health and human services for guidance on treatments, but these federal agencies are slow to recognize and recommend any treatments, requiring levels of clinical trial evidence that cannot be achieved in time to address immediate needs during an epidemic or pandemic and save lives.

(k) Other than medical facilities such as hospitals, in certain situations, businesses, premises owners, including schools and churches, have not historically been required to keep members of the public from being exposed to airborne viruses, bacteria, and germs. In Washington, it has historically been the responsibility of individuals going into public places to avoid exposure to individuals who may be sick. Individuals who decide to go out into public places are personally responsible to take steps they feel are necessary to avoid exposure to or be personally protected from any virus, such as the common cold or the flu, based on their own health needs and conditions.

(l) The possibility for asymptomatic transmission of airborne infections has always existed, and such transmission in public settings is rare. The latest studies show that in household settings, places of intimate and long-duration exposure, SARS-COV-2 transmission from presymptomatic individuals is just .7 percent, and from asymptomatic individuals zero percent.

(m) It is not practical, reasonable, or sustainable to burden businesses or premises owners, and society at large, with restrictions that, if maintained for a sustained period, can cause grave personal and economic harm, based on fear of the potential for asymptomatic or presymptomatic transmission, or fear of a chain of such transmissions.

(n) Additionally, the legislature has not delegated to the executive branch of Washington's government the authority or power to create new legal duties for businesses or premises owners. In Washington's system of government, the legislature makes Washington's laws, and the executive branch enforces those laws.

(o) Rights provided by the Washington state Constitution exist during times of epidemics and pandemics and due process must be followed.

(2) It is therefore the intent of the legislature that improved epidemic and pandemic preparedness and response plans be developed

and implemented by local public health jurisdictions statewide in order to limit the number of severe illnesses and deaths, preserve the continuity of essential government and other community services, and minimize social disruption and economic loss in the event of any epidemic or pandemic.

Sec. 2. RCW 70.26.020 and 2006 c 63 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of health.

(2) "Epidemic" means an outbreak of disease with high mortality and accompanying morbidity when it affects many people in a region at the same time.

(3) "Local health jurisdiction" means a local health department as established under chapter 70.05 RCW, a combined city-county health department as established under chapter 70.08 RCW, or a health district established under chapter 70.05 or 70.46 RCW.

((~~(3)~~)) (4) "Pandemic" means a global epidemic, and generally occurs when a new virus or a disease-causing entity or organism appears in the human population that causes higher than average mortality and morbidity.

(5) "Secretary" means the secretary of the department of health.

NEW SECTION. **Sec. 3.** A new section is added to chapter 70.26 RCW to read as follows:

The legislature finds that nothing in the Revised Code of Washington establishes duties upon businesses and premises owners to ensure that members of the general public will not be exposed to airborne germs and viruses. Furthermore, such a duty would be so burdensome so as to make operating them impossible. Therefore, the legislature declares that orders and recommendations from the executive branch, from counties and local municipalities, from boards of health and other agencies, and from any federal government agency, do not create any new legal duties for purposes of tort liability. Any such orders and recommendations are presumed to be irrelevant to the issue of the existence of a duty or breach of a duty. Furthermore, any such orders and recommendations are presumed to be inadmissible at trial to establish proof of a duty or breach of a duty in tort actions.

NEW SECTION. **Sec. 4.** A new section is added to chapter 70.26 RCW to read as follows:

(1) To ensure that the state's response to any epidemic or pandemic is balanced against negative secondary outcomes, the secretary shall submit preparedness plans, and any proposed response plans during an outbreak, to governmental agencies whose focus is relevant to and impacted by such plans for review and the preparation of impact statements that analyze potential economic and societal outcomes.

(2) Public health measures cannot have a monopoly over society. The assessment of the impact of a proposed public health response is fundamentally about balancing its negative effects on the economy and society with the positive effects in terms of a contribution to the achievement of well-defined objectives of common interest.

(3) Balancing these effects takes into account the impact of the public health response on the economic and societal welfare of the state and its citizens. The legislature intends to establish a balancing test. For that purpose, the following questions shall be starting points for deliberation:

(a) Is there a measurable and definable risk to public health;

(b) Are the tools used to measure the risk to public health validated, reproducible, and verified by the department;

(c) Is the severity of the risk to public health sufficient to enact public health measures;

(d) Is the public health measure aimed at a well-defined objective;

(e) Is the public health objective achievable and reasonable;

(f) Is the public health measure well-designed to deliver the objective;

(g) Is the public health measure proportionate to the problem addressed;

(h) Is the public health measure designed to be the least restrictive to the economy and society as possible;

(i) Do the benefits of the measure outweigh the risks to economic and societal health;

(j) Does another approach exist to achieve the objective with less risk to the economy and society;

(k) Is the state properly prepared to implement the measure;

(l) Is there a clearly defined end goal at which time the measure would end;

1 (m) Is there a tipping point at which the public health measure's
2 risk to the economy and society outweigh the benefits; and
3 (n) Is there sufficient protection for the individual
4 constitutional rights of the people affected by the public health
5 measures?

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.26
7 RCW to read as follows:
8 (1) The secretary shall establish requirements and standards,
9 consistent with any requirements or standards established by the
10 United States department of health and human services when
11 appropriate for the situation and needs in Washington, regarding the
12 development and implementation of local epidemic and pandemic
13 preparedness and response plans.
14 (2) The secretary shall take steps annually, and during any
15 outbreak situation, to review new empirical data and ensure that any
16 test used to determine a "case" of a disease considered to be caused
17 by a pathogen of interest exhibits and maintains the following in-
18 field performance evaluation measures: Sensitivity to detect the
19 pathogen of greater than 95 percent when present, specificity to not
20 detect the pathogen of greater than 99 percent when absent, with
21 positive test results being confirmed by independent technology to be
22 100 percent specific to the pathogen of interest.
23 (3) The secretary shall annually, and during any epidemic or
24 pandemic, convene a committee of health professionals, including
25 medical and naturopathic physicians, to discuss and generate a report
26 on the most current nutrient and drug therapies and other treatment
27 modalities available for supporting the immune system to help prevent
28 viral infections and help prevent severe disease. This report shall
29 be made available to the medical community and the public.
30 (4) The secretary shall ensure that subpopulations most impacted
31 by any epidemic or pandemic are identified and provided with
32 appropriate and adequate support, including information about
33 nutrient and drug preventative and treatment therapies as identified
34 by the committee defined in subsection (3) of this section, to
35 address underlying susceptibility factors and exposure protection as
36 needed.
37 (5) The secretary shall include in any risk-benefit analysis of
38 public health measures being considered the impact on the economy,
39 society, and individuals, to ensure minimum impact of public health

1 measures on the general population and to prevent economic, societal,
2 and personal harm and hardships.
3 (6) To the extent state or federal funds are provided for this
4 purpose, by November 1, 2021, each local health jurisdiction shall
5 develop an epidemic and pandemic preparedness and response plan,
6 consistent with requirements and performance standards established in
7 subsection (1) of this section, for the purpose of:
8 (a) Defining preparedness activities that should be undertaken
9 before an epidemic or pandemic occurs that will enhance the
10 effectiveness of response measures;
11 (b) Describing the response, coordination, and decision-making
12 structure that will incorporate the local health jurisdiction; the
13 local health care system; local medical, naturopathic, and
14 alternative practitioners who provide vital ambulatory care and
15 thereby reduce the number of severe cases; other local response
16 agencies; and state and federal agencies during the epidemic or
17 pandemic;
18 (c) Defining the roles and responsibilities for the local health
19 jurisdiction, local health care partners, and local response agencies
20 during all phases of a pandemic;
21 (d) Describing public health interventions in a pandemic response
22 and the timing of such interventions;
23 (e) Serving as a guide for local health care system partners,
24 response agencies, and businesses in the development of epidemic and
25 pandemic response plans; and
26 (f) Providing technical support and information on which
27 preparedness and response actions are based.
28 (7) Each plan shall be developed based on an assessment by the
29 local health jurisdiction of its current capacity to respond to
30 epidemic and pandemic illnesses and otherwise meet department outcome
31 measures related to infectious disease outbreaks of statewide
32 significance.

33 <u>NEW SECTION.</u> **Sec. 6.** A new section is added to chapter 70.26
34 RCW to read as follows:
35 (1) Each local health jurisdiction shall develop its pandemic
36 preparedness and response plan based on the requirements and
37 performance standards established under section 5(1) of this act and
38 an assessment of the jurisdiction's current capacity to respond to an
39 epidemic or pandemic. The plan shall be developed in consultation

with appropriate public and private sector partners, including departments of emergency management, law enforcement, school districts, hospitals and medical professionals, medical and naturopathic physicians, tribal governments, and business organizations. At a minimum, each plan shall address:

(a) Strategies to educate the public about epidemic and pandemic illnesses and what each person can do to prepare, including: The adoption of universal infectious disease prevention practices, improving personal health and wellness habits, proper hygiene, ensuring adequate levels of nutrients known to directly relate to illness susceptibility, access to the most recent report on preventive and treatment therapies by the committee as described in section 5(3) of this act; complete, accurate, and up-to-date information on risks and benefits of any licensed or emergency use authorization vaccine available; and maintaining appropriate emergency supplies;

(b) Strategies to minimize impacts on local businesses, schools, and churches;

(c) Strategies for keeping businesses, schools, and churches open for all those who choose not to isolate, while supporting those who do choose to self-isolate because of increased risk of severe disease;

(d) Jurisdiction-wide disease surveillance programs only with tests meeting the requirements specified in section 5(2) of this act, coordinated with state and federal efforts, to detect epidemic or pandemic strains in humans and animals, including health care provider compliance with reportable conditions requirements and investigation and analysis of reported illness or outbreaks;

(e) Communications systems, including the availability of and access to specialized communications equipment by health officials and community leaders, and the use of mass media outlets;

(f) Guidance to the general public for locating a practitioner of their choosing to advise on the utilization of nutrient and drug therapies for the treatment and prevention of the epidemic or pandemic illness;

(g) Recommendation of nonmedical measures to decrease the spread of the disease as guided by the epidemiology of the pandemic, including proper ventilation, air circulation and optimal humidity in indoor spaces, hand washing, staying home when symptomatic, voluntary mask wearing in limited and appropriate situations, and voluntary

social isolation of those susceptible to severe or fatal disease during outbreaks;

(h) Notification to all citizens of their rights to due process for any quarantine or any restrictive measure that limits their freedom of movement and normal activities, such as going to work or attending school;

(i) Medical system mobilization, including improving the linkages and coordination of emergency responses across health care organizations, and assuring the availability of adequate facilities and trained personnel; and

(j) The jurisdiction's relative priorities related to implementation of the activities in this subsection, based on available funding.

(2) To the extent state or federal funds are provided for this purpose, the department, in consultation with the state director of emergency management, shall provide technical assistance and disburse funds as needed, based on the formula developed under section 8 of this act, to support local health jurisdictions in developing their epidemic and pandemic preparedness and response plans.

NEW SECTION. **Sec. 7.** A new section is added to chapter 70.26 RCW to read as follows:

(1) Local health jurisdictions shall submit their pandemic preparedness and response plans to the secretary by November 1, 2021. Upon receipt of a plan, the secretary shall approve or reject the plan. When the plan is determined by the department to comply with the requirements and integrate the performance standards established under section 5 of this act, any additional state or federal funding appropriated in the budget shall be provided to the local health jurisdiction to support the preparedness response activities identified in the plan, based upon a formula developed by the secretary under section 8 of this act. Preparedness and response activities include but are not limited to:

(a) Education, information, and outreach, in multiple languages, to increase community preparedness and reduce the spread of the disease should it occur;

(b) Development of materials and systems to be used in the event of an epidemic or pandemic to keep the public informed about the illness, nutrient and drug therapies for prevention and treatments as

described in section 5(3) of this act, the course of the pandemic, and response activities;

(c) Development of the legal documents necessary to facilitate and support the necessary government response;

(d) Training and response drills for local health jurisdiction staff, law enforcement, health care providers, and others with responsibilities identified in the plan;

(e) Enhancement of the communicable disease surveillance system; and

(f) Development of coordination and communications systems among responding agencies.

(2) Where appropriate, these activities shall be coordinated and funded on a regional or statewide basis. The secretary, in consultation with the state director of emergency management, shall provide implementation support and assistance to a local health jurisdiction when the secretary or the local health jurisdiction has concerns regarding a jurisdiction's progress toward implementing its plan.

NEW SECTION. **Sec. 8.** A new section is added to chapter 70.26 RCW to read as follows:

The secretary shall develop a formula for distribution of any federal and state funds appropriated in the omnibus appropriations act on or before July 1, 2021, to local health jurisdictions for development and implementation of their epidemic and pandemic preparedness and response plans. The formula developed by the secretary shall ensure that each local health jurisdiction receives a minimum amount of funds for plan development and that any additional funds for plan development be distributed equitably, including consideration of population and factors that increase susceptibility to an outbreak, upon soliciting the advice of the local health jurisdictions.

NEW SECTION. **Sec. 9.** A new section is added to chapter 70.26 RCW to read as follows:

The secretary shall:

(1) Develop a process for assessing the compliance of each local health jurisdiction with the requirements and performance standards developed under section 5(1) of this act at least biannually;

1 (2) By November 15, 2022, report to the legislature on the level
2 of compliance with the performance standards established under
3 section 5(1) of this act. The report shall consider the extent to
4 which local health jurisdictions comply with each performance
5 standard and any impediments to meeting the expected level of
6 performance.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.26
8 RCW to read as follows:
9 Any public health measure by the state that infringes on the
10 Washington state Constitution or the United States Constitution may
11 not be enforced.

12 NEW SECTION. **Sec. 11.** The following acts or parts of acts are
13 each repealed:
14 (1) RCW 70.26.010 (Findings—Intent) and 2006 c 63 s 1;
15 (2) RCW 70.26.030 (Local preparedness and response plans—
16 Requirements) and 2006 c 63 s 3;
17 (3) RCW 70.26.040 (Local preparedness and response plans—
18 Consultation with public, private sector—Department to provide
19 technical assistance and disburse funds) and 2006 c 63 s 4;
20 (4) RCW 70.26.050 (Plans to be submitted to secretary for
21 approval, rejection—Funding—Preparedness and response activities)
22 and 2006 c 63 s 5;
23 (5) RCW 70.26.060 (Secretary to develop a formula for fund
24 distribution—Requirements) and 2006 c 63 s 6; and
25 (6) RCW 70.26.070 (Secretary duties—Report) and 2006 c 63 s 7.

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