

Title 13

HEALTH AND ECONOMIC WELFARE SERVICES

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Chapter 01

AMERICAN SAMOA MEDICAL CENTER ACT

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13.0101 American Samoa Medical Center—Establishment.

American Samoa Medical Center, hereinafter "Medical Center" is established as an independent agency of the Executive branch of the American Samoa Government.

History: 1998, PL 25-20.

13.0102 Medical Center--Powers and duties.

The Medical Center has the powers and duties:

- (1) to provide quality medical attention within the constraints of available resources as required by statute;
- (2) to operate, manage, and supervise all hospital facilities and functions of the Medical Center; and other medical facilities that may in the future become part of the Medical Center through construction, purchase, or lease;
- (3) to provide mobile emergency services;
- (4) to hire, supervise, and discipline health service professionals and other employees as necessary to fulfill its duties in accordance with the laws and rules applicable to American Samoa Government employees and 13.0108 of this act;
- (5) to obtain expert advice and consultation in matters related to the operation of the Medical Center;
- (6) to procure, purchase, lease or otherwise acquire personal property of every kind in accordance with American Samoa Government procurement laws and rules and regulations promulgated by Medical Center pursuant to this act;
- (7) to hold, enjoy, inventory, and account for personal property of every kind;
- (8) to sell and convey personal property of every kind in accordance with American Samoa Government procurement laws and rules or rules and regulations promulgated by Medical Center pursuant to this act;
- (9) to obtain, manage, and expend financial gains for the purpose of transacting its business;
- (10) to directly receive, and expend, federal grant funds as a sub-grantee of the American Samoa Government;
- (11) to operate Medical Center financial accounts and to provide accounting therefore in accordance with generally accepted accounting principles;
- (12) to establish and publish schedules of charges and fees for services in accordance with the Administrative Procedures Act, 4.1001 et seq. A.S.C.A.;
- (13) to provide the Governor and the Legislature with quarterly financial reports, and an annual report each;
- (14) to adopt administrative rules pursuant to the Administrative Procedures Act, 4.1001 et seq. A.S.C.A., as are necessary for the efficient and effective administration of the powers and duties of the Medical Center;
- (15) to work with the Department of Health to coordinate activities directed toward health promotion and illness prevention; and
- (16) to take such other action as is necessary to accomplish the full and convenient exercise of the foregoing powers and duties.

History: 1998, PL 25-20.

13.0103 Medical Center--Board of Directors.

- (a) The Medical Center shall be governed by a Board of five Directors.
- (b) The members of the Board of Directors shall be appointed by the Governor and confirmed by the Senate, and may be removed by the Governor only for cause.
- (c) The Board of Directors shall be constituted as follows:

- (1) two members with extensive financial or business management experience;
 - (2) one member who is an active or retired Medical Doctor;
 - (3) one member who has extensive health care administration, or public administration experience; and
 - (4) one member at large.
- (d) No more than two Directors may have their primary residence outside of American Samoa.
- (e) No director may serve while also employed by the Medical Center.
- (f) The Medical Director, Chief Executive Officer, and Chief of Nursing Services, of the Medical Center, may serve as ex officio board members, without vote, at the invitation of the five voting members.
- (g) Upon the effective date of this chapter, the Governor shall appoint five Directors for terms of one, two, three, four, and five years respectively, in order to establish staggered terms. Subsequently, the Governor shall make appointments for such periods as will maintain staggered terms, but with no term exceeding four years.
- (h) Any vacancy arising during an unexpired term shall be filled by appointment of the Governor. Recess appointments may be made to fill vacancies caused by death, resignation, or removal for cause if the vacancy occurs while the Legislature is not in session. Recess appointments shall expire at the conclusion of the next following regular or special session of the Legislature if they are not confirmed during that session. Incumbents may continue to serve after the expiration of their terms until a successor is appointed and confirmed.
- (i) The Board shall meet at least once per quarter. A quorum is three Directors. The Board may meet via video teleconference or by telephone.
- (j) Board members shall be compensated at the rate of five thousand dollars per year, except the chairperson, who shall be paid six thousand dollars per year. Non-resident board members shall also receive compensation for necessary travel, lodging, meals, and telecommunication expenses incurred in the performance of their duties.

History: 1998, PL 25-20, amd 2004, PL 28-27.

13.0104 Board of Directors--Powers and duties.

All powers and duties vested in the Medical Center shall be exercised by the Board. In carrying out its functions, the Board shall also:

- (1) elect officers at its first meeting, including a chairperson, vice-chairperson and others as the Board deems advisable. Thereafter, the Board shall elect officers annually at the first meeting of each fiscal year;
- (2) appoint, supervise, and prescribe duties and compensation for the Chief Executive Officer, Chief Financial Officer, and Medical Director;
- (3) ensure that the Medical Center employs well-qualified, competent medical and other professional, ancillary, and clerical staff;
- (4) ensure that all Medical Center facilities and equipment are kept up-to-date and in good condition;
- (5) adopt criteria and implement a process which ensures that decisions for making off-island medical referrals are based upon a rational, consistent, informed, and fair determination of medical necessity in accordance with the existing diagnostic and treatment capabilities of the Medical Center;
- (6) provide for an accurate accounting and financial management system, and review

- the monthly operation statements and other financial reports as it deems necessary;
- (7) negotiate agreements to make Medical Center resources available to the Department of Health when necessary to perform public health duties and respond to public health emergencies; and
 - (8) submit reports to the Governor as he directs from time to time.

History: 1998, PL 25-20.

13.0105 Chief Executive Officer.

The Chief Executive Officer shall be responsible for the overall management of the Medical Center's operations under the direction and control of the Board of Directors. The Chief Executive Officer shall report directly to the Board of Directors.

History: 1998, PL 25-20.

13.0106 Chief Financial Officer.

The Chief Financial Officer shall be responsible for the financial management of the Medical Center's operations under the direction and control of the Chief Executive Officer. The Chief Financial Officer shall report directly to the Chief Executive Officer.

History: 1998, PL 25-20.

13.0107 Medical Director.

The Medical Director shall be a physician who shall be responsible for maintaining the quality of professional medical care provided by the Medical Center. The Medical Director shall report directly to the Chief Executive Officer. For the purposes of this act, a physician is defined as a medical doctor, or equivalent; an osteopath; or, a medical officer, who is also licensed to practice medicine in American Samoa.

History: 1998, PL 25-20.

13.0108 Personnel.

All officers and employees of the Medical Center other than the Chief Executive Officer, Chief Financial Officer, and Medical Director, are hired and compensated in accordance with the requirement of the American Samoa Government personnel laws, 7.0101 et seq., except that the Board may adopt administrative rules, pursuant to 4.1001 A.S.C.A., et seq., to supplant government employee rules in the specific categories of personnel recruitment, employment, termination of employee services, disciplinary action, and compensation at levels comparable to prevailing medical service levels. The status of Medical Center career service employees remains unchanged by this act.

History: 1998, PL 25-20.

13.0109 Medical Center accounts--Establishment.

The Medical Center shall establish Medical Center financial accounts. The use of the accounts shall be restricted to transactions authorized by the Medical Center and no funds deposited into the Medical Center accounts may be withdrawn for any other purpose. All revenues generated by the Medical Center, third party payments, federal medicaid funds, medicare reimbursements, grants specifically allocated to the Medical Center and its

purposes, tax revenues specifically earmarked by law for Medical Center purposes, donations, gifts, and funds appropriated by the Legislature for the Medical Center, shall be deposited into the Medical Center accounts. One twelfth of the amount annually appropriated by the Legislature for the Medical Center shall be deposited into the Medical Center accounts no later than the fifth of each month. The Medical Center shall use its accounts to pay all of its debts and liabilities, including payroll and operating expenses.

History: 1998, PL 25-20.

13.0110 Accounting and financial management.

The Medical Center is responsible for the program planning, accounting and financial management of its operations and shall administer all accounting systems, including general ledger, fixed assets, accounts receivable, accounts payable, payroll, revenues, and cash through the Medical Center revenue fund.

History: 1998, PL 25-20.

13.0111 Procurement.

The Medical Center may contract for the procurement of supplies, equipment, materials, personal services, and construction, with any public or private entity upon the terms and conditions it finds necessary to the full and convenient exercise of its purposes and powers, subject to all applicable laws and rules of American Samoa. The Chief Financial Officer of the Medical Center shall act as the procurement officer for the purposes of this act. A.S.C.A., 12.0209 is amended to reflect this change. The Medical Center shall receive and account for its inventory of materials, supplies and equipment.

History: 1998, PL 25-20.

13.0112 Budget.

The Medical Center shall prepare an annual budget sufficient to support its operations and planned improvements, and to provide basic health care services of acceptable quality and scope. The annual Medical Center budget shall be submitted to the Governor, for submittal to the Legislature as a part of the Governor's budget.

History: 1998, PL 25-20.

13.0113 Legal representation.

The Attorney General of American Samoa, as the attorney for the American Samoa Government, shall represent the Medical Center with respect to all legal matters. The Medical Center at its own discretion may retain the services of a private attorney.

History: 1998, PL 25-20.

13.0114 Re-allocation of existing resources.

The Medical Center shall have control of all personal property used in connection with the operations of the existing hospital. The Medical Center shall have the right to occupy all real property currently occupied by the existing hospital, but the authority to control the future use of such real property shall remain with the Governor. Property jointly used

for hospital and other government functions must be equitably allocated between government agencies and the Medical Center. All American Samoa Government employees currently assigned to the hospital shall be under the control of the Medical Center. In the event of a dispute, the reallocation of existing resources shall be determined by the Governor. Upon completing the re-allocation of existing resources, the Medical Center shall provide the Governor with an inventory summarizing the disposition of all property and employees affected.

History: 1998, PL 25-20.

13.0115 Re-allocation of existing debts and liabilities.

The Medical Center shall pay all debts and liabilities incurred in its operation. The Medical Center shall itemize all existing debts and liabilities and submit allocated to the Medical Center and which debts should be allocated to the general fund.

History: 1998, PL 25-20.

13.0116 Effective date.

This act is effective immediately upon passage by the Legislature and approval by the Governor, due to the emergency need to satisfy the federal requirements for continued eligibility of American Samoa's Medicare and Medicaid funding for the LBJ Tropical Medical Center.

History: 1998, PL 25-20.

13.0117 Transition.

Notwithstanding the effective date of this act, the Medical Center shall adopt a transition timetable and schedule for the reasonable and prudent transfer of administrative and financial management functions required by this act.

History: 1998, PL 25-20.

Chapter 02

AMERICAN SAMOA PUBLIC HEALTH ACT

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- 13.0210 Reporting requirements for reportable diseases or conditions.**
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13.0201 Short title.

This chapter shall be known as, and may be cited as, the American Samoa Public Health Act.

History: 2007, PL 30-11.

13.0202 Purposes.

The purpose of this act is to:

- (a) Identify and strengthen the public health infrastructure to improve the public's health;
- (b) Establish the department's mission for providing essential public health services and functions through the department and in collaboration with federal agencies, American Samoa Government (ASG) agencies, public and private sector partners and volunteers;

- (c) Identify roles and responsibilities of the department to provide essential public health services and functions while also respecting individual rights;
- (d) Establish operational standards for the department that are directly related to improvements in public health outcomes or other measures;
- (e) Develop and provide effective training and credentialing for department personnel and other members of the public health workforce in the Territory;
- (f) Comprehensively plan and set priorities for improving and sustaining the public's health through the performance of essential public health services and functions using ongoing, inclusive, and systematic planning processes;
- (g) Promote and build strong relationships between the department, ASG agencies, public and private sector partners and volunteers;
- (h) Promote cooperation and formal collaborative agreements between the department and federal, ASG agencies, public and private sector partners and volunteers regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, funding, service delivery, jurisdiction, and other matters addressed in this act;
- (i) Create scientifically-sound, legally-sound and effective operating procedures for the department for the prevention and control of conditions of public health importance at the individual and community levels that are consistent with guiding principles authorizing the responsible use of procedures and respect for individual rights;
- (j) Address privacy and security issues arising from the acquisition, use, disclosure, and storage of identifiable health information by the department;
- (k) Require regular reporting and accountability for the department.

History: 2007, PL 30-11.

13.0203 Definitions.

As used in this act, these terms shall be defined as follows:

- (1) "Acquire", "acquired" or "acquisition" means to collect or gain possession or control of.
- (2) "Act" means the American Samoa Public Health Act.
- (3) "ALJ" means the Office of the Administrative Law Judge.
- (4) "Amend", "amends", "amendment" means to change without obliterating the original information.
- (5) "ASG" means the American Samoa Government.
- (6) "Condition of public importance" means a disease, syndrome, symptom, or other threat to public health that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community.
- (7) "Confidentiality statement" means a written statement dated and signed by an applicable individual, which certifies the individual's agreement to abide by the privacy and security policy of the department.
- (8) "Contact" means an individual who has been identified as having been exposed, or potentially been exposed, to a contagious or possibly contagious disease through another individual or nonhuman source with the contagious or possibly contagious disease.
- (9) "Contagious disease" means an infectious disease that affects humans that can be transmitted from individual to individual, animal to animal, or animal to individual.
- (10) "Counseling and referral services" or "CRS" means outreach activities for finding contacts to inform them of their possible exposure to contagious diseases and provide counseling, testing, and referral services to prevent the further spread of the disease.

(11) “Court” means any American Samoa court of competent jurisdiction.

(12) “Decontaminate”, “decontaminated”, or “decontamination” means to remove or neutralize chemical, radiological, or biological substances or residues from individuals, buildings, objects, or areas.

(13) “Demonstration project” means a community health center established by the department pursuant to Section 330(e) of the Public Health Services Act, 42 U.S.C. §254b, or other such project initiated to provide community health services in a manner distinctly different from other government community health centers for the purpose of demonstrating improved health benefits to the Territory.

(14) “Department” means the Department of Health.

(15) “Director” means the Director of the Department of Health.

(16) “Disclose”, “disclosed” or “disclosure” means to release, transfer, disseminate, provide access to, or otherwise communicate or divulge all or any part of.

(17) “Disease outbreak” means the sudden and rapid increase in the number of cases of a disease or other condition of public health importance in a population.

(18) “Epidemic” means the occurrence in a community or region of a condition or group of similar conditions of public health importance that are in excess of normal expectancy and derived from a common or propagated source.

(19) “Essential public health services and functions” means services and functions to:

(A) monitor health status to identify and solve public health problems;

(B) investigate and diagnose health problems and health hazards in a community;

(C) inform, educate, and empower individuals about health issues;

(D) mobilize public and private sector partner and volunteer collaboration and action to identify and solve public health problems;

(E) develop policies, and plans, and programs that support individual and community health efforts;

(F) enforce laws and regulations that protect public health and ensure public safety;

(G) direct individuals to needed personal health services and assure the provision of health care when otherwise unavailable;

(H) assure a competent department workforce;

(I) evaluate effectiveness, accessibility, and quality of personal and population-based health services; and

(J) research for new insights and innovative solutions to public health problems.

(20) “Exam”, “examining” or “examination” means the same as “test” or “testing”.

(21) “Expunge”, “expunged” or “expunging” means to permanently destroy, delete, or make non-identifiable.

(22) “Fono” means the Legislature of American Samoa.

(23) “Health care provider” means any person that provides health care services including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician assistants, registered and licensed practical/vocational nurses, paramedics, emergency medical or laboratory technicians, community health workers, and ambulance and emergency medical workers.

(24) “Identifiable health information” means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form, that relates to an individual’s past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and:

(A) reveals the identity of the individual whose health care is the subject of the information; or

(B) there is a reasonable basis to believe the information could be utilized (either alone or with other information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

(25) “Individual” means a natural human being.

(26) “Infectious disease” means a disease caused by a living organism or other pathogen, including a fungus, bacteria, parasite, protozoan, or virus. An infectious disease may be transmissible from individual to individual, animal to individual, or insect to individual.

(27) “Infectious waste” means blood and blood products, excretions, exudates, secretions, suctioning and other body fluids, and waste materials saturated with blood or body fluids, including etiologic agents and associated biologicals; specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures; wastes from production of biologicals and serums; and discarded live and attenuated vaccines; biopsy materials and all human tissues; anatomical parts that emanate from surgery, obstetrical procedures, necropsy or autopsy and laboratory procedures; animal carcasses exposed to pathogens in research and the bedding and other waste from such animals, needles, I.V. tubing with needles attached, scalpel blades, lancets, breakable glass tubes, and syringes that have been removed from their original sterile containers, but does not include teeth or formaldehyde (or other preservative agents).

(28) “Isolate”, “isolated”, or “isolation” means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the diseases to non-isolated individuals.

(29) “License,” “licensed,” or “licensure” means an authorization that conditionally allows the recipient to conduct, for a specified period of time, activities that would be unlawful without the authorization.

(30) “Non-identifiable health information” means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form that relates to an individual’s past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care; and

(A) Does not reveal the identity of the individual whose health status is the subject of the information; or

(B) There is no reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be, known to be available to predictable recipients of such information) to reveal the identity of that individual.

(31) “Nuisance” means a condition, act, or failure to act that unreasonably interferes with the health or safety of the community by endangering life, generating or spreading infectious diseases, or otherwise injuriously affecting the public’s health.

(32) “Person” means an individual, corporation (for-profit or nonprofit), estate, trust, partnership, limited liability company, association, institution, joint venture, governmental body, or any other legal or commercial entity.

(33) “Predictive value” or “PV” means the ability of a test or exam to accurately predict the presence or absence of a condition of public health importance in a population. The PV is determined by the test’s validity (i.e., sensitivity and specificity), reliability, and the prevalence of the condition in the population.

(34) “Private sector partner” means non-governmental person or agency, including community organizations, contractors, educational institutions, health care facilities,

health care providers, health insurers, private businesses, medical, and nonprofit organizations that provide essential public health services and functions or work to improve public health outcomes in collaboration with the department.

(35) “Public health infrastructure” means the competencies and resources that enable the department, in collaboration with federal or ASG agencies, public and private sector partners and volunteers to provide essential public health services and functions throughout the Territory.

(36) “Public health system” means the department and all of the department’s public and private sector partners and volunteers.

(37) “Public information” means information that is generally open to inspection or review by the public.

(38) “Public sector partner” means international, federal, or ASG agencies that provide, in cooperation with the department, essential public health services and functions or work to improve public health outcomes with the Territory.

(39) “Quarantine” means the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit the transmission of the disease to non-quarantined individuals.

(40) “Request” means a written, dated, and signed correspondence on paper or electronic form through which the identity of the individual executing the correspondence can be verified.

(41) “Requestor” means any individual (or legal representative) who makes a request.

(42) “Sample” means a substance derived from a nonhuman source and collected for the purposes of analysis.

(43) “Screen,” “screened,” or “screening” means the systematic application of a test or exam to a defined population.

(44) “Specimen” means blood, sputum, urine, stool, or other bodily fluids, wastes, tissues, and cultures collected for the purpose of performing required tests.

(45) “Store,” “stored,” or “storage” means to hold, maintain, keep, or retain all or any part of.

(46) “Test” or “testing” means any diagnostic or investigative analyses or medical procedures that determine the presence or absence of, or exposure to, a condition of public health importance, or its precursor, in an individual.

(47) “Territory” means the United States territory of American Samoa including Tutuila, Aunu’u, the Manu’a islands and Swain’s island.

(48) “Toxic” or “toxin” means a chemical, radiological, or biological agent that causes disease or some alteration of the normal structure and function of an individual or animal.

(49) “Transmissible” means capable of causing disease or infection through individual to individual, animal to individual, or other modes of transmission.

(50) “Use” or “used” means to employ or utilize all or any part of.

(51) “Vaccinate,” “vaccinated,” “vaccination,” or “vaccine” means a suspension of attenuated or noninfectious microorganisms or derivative antigens administered to stimulate antibody production or cellular immunity against a pathogen for the purpose of preventing, ameliorating, or treating an infectious disease.

(52) “Volunteer” means any authorized person who provides services or functions on a voluntary, unpaid basis to the department including any such individual or entity that

participates in any activity covered or described by this act with the approval or permission of the department or the director.

(53) “Written authorization” means a written statement authorizing the disclosure of identifiable health information on a form substantially similar to one promulgated by the department which is signed in writing or electronically by the individual who is the subject of the information.

History: 2007, PL 30-11.

13.0204 Mission statement.

(a) It is the policy of the department that the health of the public be protected and promoted to the greatest extent possible through the public health system while respecting individual rights to dignity, health information privacy, nondiscrimination, due process, and other legally protected interests.

(b) The mission of the department is to provide leadership and protect and promote the public’s health by:

- (1) Assuring the conditions in which individuals can be healthy;
- (2) Providing or assuring the provision of essential public health services and functions that are culturally and linguistically appropriate for the Territory;
- (3) Encouraging collaboration among public and private sector partners in the public health system; and
- (4) Seeking to provide essential public health services and functions or accomplish public health goals.

(c) The department shall seek to accomplish its mission of public health while respecting individual rights including:

- (1) Respect for the dignity of each individual;
- (2) Protection of health information privacy for each individual;
- (3) Provision of adequate due process as required by this act or other applicable laws of the Territory; and
- (4) Avoidance of explicit or implicit discrimination in an unlawful manner of individuals on the basis of their race, ethnicity, nationality, religious beliefs, sex, sexual orientation, or disability status.

History: 2007, PL 30-11.

13.0205 Public health infrastructure.

(a) A strong public health infrastructure is needed to achieve the mission of the department and to provide essential public health services and functions, in collaboration with federal agencies, ASG agencies, public and private sector partners and volunteers.

(b) Developing a strong public health infrastructure requires the coordinated efforts of the department and federal agencies, ASG agencies, public and private sector partners and volunteers within the public health system to:

- (1) Identify and provide leadership for the providing of essential public health services and functions;
- (2) Develop and support an information infrastructure that supports essential public health services and functions;
- (3) Develop and provide certification, credentialing, or effective training for Department personnel, ASG agencies, public and private sector partners and volunteers;

- (4) Develop operational standards for the department that are directly related to improvements in public health outcomes or other measures;
- (5) Consider participation in voluntary accreditation programs for department personnel, ASG agencies, public and private sector partners and volunteers;
- (6) Provide incentives for and evaluation of department efforts, management, and accreditation standards;
- (7) Comprehensively plan and set priorities for the accomplishment of essential public health services and functions; and
- (8) Improving public health outcomes is dependent on the active role of federal agencies, ASG agencies, public and private sector partners and volunteers collaborating with the department to provide essential public health services and functions.

History: 2007, PL 30-11.

13.0206 Public health department powers.

- (a) The department shall have general charge, oversight, and care of the public health of the people of the Territory.
- (b) To carry out the mission of the department and to develop a strong public health infrastructure, the department is authorized to provide or implement essential public health services and functions, including services or functions to:
 - (1) Utilize a broad range of flexible powers to protect and promote the public's health;
 - (2) Declare and enforce quarantine when none exists and modify or release quarantine when it is established;
 - (3) When it is determined that there is imminent danger of epidemic or serious outbreak of communicable disease, it may refuse, modify, or limit attendance at any school in the Territory;
 - (4) When in the judgment of its director, there is deemed to be a condition of public health importance, the department, through its director, may take precautionary measures to protect the public through:
 - (A) The imposition of an embargo;
 - (B) The detention of products regulated by the department;
 - (C) The removal of products regulated by the department from the market; and
 - (D) Declaration of quarantine.
 - (E) Any and all actions taken by the director or the department under this subsection (b)(4) must be rescinded within seventy-two (72) hours unless the director or department finds and reports evidence of the condition of public health importance. The director and department finding shall be reported to the Governor.
- (5) Provide public health information programs or messages to the public that promote healthy behaviors or lifestyles, or educate individuals about health issues;
- (6) Promote efforts among public and private sector partners to develop and fund programs or initiatives that identify and ameliorate health problems;
- (7) Conduct, provide, or endorse operational standards for the department;
- (8) Develop and provide certification, credentialing, or effective training for department personnel;
- (9) Develop, adopt, and implement public health plans that guide or support individual and community public health efforts;
- (10) Establish formal or informal relationships with public or private sector partners within the public health system;

(11) Enforce the provisions and requirements of this act;

(12) Identify, assess, prevent, and ameliorate conditions of public health importance through surveillance; epidemiological tracking, program evaluation, and monitoring; testing and screening programs; treatment; abatement of public health nuisances; administrative inspections; or other techniques;

(13) Promote the availability and accessibility of quality health care services through health care facilities or providers;

(14) Promote availability of and access to preventive and primary health including acute and episodic care, prenatal and postpartum care, child health, family planning, school health, chronic disease prevention, child and adult immunization, testing and screening services, dental health, nutrition, health education and promotion services;

(15) Systematically and regularly review the public health system to recommend modifications in its structure or other features to improve public health outcomes;

(16) To the development of a strong public health infrastructure, the department may consult and attempt to utilize national guidelines, initiatives, programs, and recommendations relating to improvements in accomplishing the mission of the department; and

(17) Prevent, control, or ameliorate conditions of public health importance.

(18) The department and the director may work specifically with federal agencies, ASG agencies, public and private sector partners and volunteers to build effective relationships and promote the participant's role in furthering the mission of public health.

(c) The department shall seek to improve and maintain the health of the people of the Territory through the planning and implementation of programs, activities, and services that promote healthy behaviors and reduce health related risks and hazards, and by programs and services that serve to prevent the incidence of disease and injury. Health promotion and disease prevention activities and services conducted by the Department of Health shall include:

(1) A program of health education throughout the Territory for the purpose of informing the public as to the cause of common diseases and injuries, and effective strategies for reducing the risk of occurrence, or consequences of such diseases and injuries;

(2) Health promotion and disease prevention activities and programs in the Territory, including maternal and child health; chronic disease prevention and control; child immunizations; child vision and hearing screening, children with special health care needs services, dental health screening and prevention services; epidemiology, nutrition education and assessments; prevention of sexually transmitted diseases, including human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS);

(3) The collection, analysis, and dissemination of statistical information pertinent to any of its activities;

(4) Cooperation and collaboration with other governmental agencies on issues, programs, and activities related to health improvement and maintenance;

(5) Such other appropriate functions as may be determined to be effective in the promotion of health and the prevention of disease.

(d) The department shall have the authority to request warrants for law enforcement assistance required for the operation or enforcement of any provision of this act.

(e) The department shall have the authority to request assistance from the American Samoa Government attorney general, law enforcement officials, or any other American Samoa official in the operation or enforcement of any provision of this act.

History: 2007, PL 30-11.

13.0207 Guiding principles for director and department.

(a) In carrying out the director and department's authorized powers, the director and the department shall be guided by the following principles:

(1) The exercise of any public health authority or power shall further or support improving or sustaining the public's health by performing essential public health services and functions.

(2) Whenever possible, the department shall exercise its authorities or powers through procedures, practices, or programs that are based on modern, scientifically-sound principles and evidence.

(3) The department shall strive to design and implement interventions that are well-targeted to accomplishing essential public health services and functions. The department should avoid using compulsory power in a manner that is over-broad (applying to more individuals than is necessary for the public's health).

(4) The department shall employ the least restrictive alternative in the exercise of its authorities or powers, especially compulsory powers. This means that where the agency may exercise one or more of its authorities or powers to accomplish essential public health services and functions, it shall, to the extent possible, employ the policy or practice that least infringes on the rights or interests of individuals. Employing the least restrictive alternative does not require the department to adopt policies or programs that are less effective in protecting the public's health.

(5) The Department shall not discriminate in an unlawful manner against individuals on the basis of their race, ethnicity, nationality, religious beliefs, sex, sexual orientation, or disability status.

(6) The department shall respect the dignity of each individual under their jurisdiction, regardless of their nationality, citizenship, or residency status.

(7) Protecting the public's health requires ongoing public health education and outreach to encourage, facilitate, and promote community participation in accomplishing public health goals.

(b) Whenever the department or director exercises compulsory powers;

(1) The department or director, wherever possible, should first request that the individual participate voluntarily with compulsory action.

(2) Any individual of a defined class may be subjected to the compulsory action pursuant to a Court order, provided the individual will not be directly harmed by the compulsory action.

(3) The department may also employ other public health intervention to eliminate the risk or danger to others or the public's health.

History: 2007, PL 30-11.

13.0208 Public health planning and priority setting.

(a) To promote the availability of essential public health services and functions, the department may undertake the development of a comprehensive, Territory-wide public health plan that assesses and sets priorities for the public health system.

(b) If the department undertakes the development of a plan, then the plan shall assess and set priorities for the Territory-wide public health system and shall:

- (1) Guide the public health system in targeting essential public health services and functions through program development, implementation, and evaluation;
 - (2) Strive to increase the efficiency and effectiveness of the public health system;
 - (3) Identify areas needing greater resource allocation to provide essential public health services and functions; and
 - (4) Incorporate goals and priorities of the department.
- (c) The plan shall prospectively cover five (5) years, subject to annual revisions. Future plans may be produced every five (5) years.
- (d) The department shall make available a copy of the comprehensive public health plan to the Governor, the Fono, ASG agencies, public and private sector partners and volunteers that contribute to or participate in the plan.

History: 2007, PL 30-11.

13.0209 Declaration of reportable diseases or conditions.

- (a) The director, or his designee, shall establish a list of reportable diseases or conditions of public health importance. The list may also include diseases or conditions of humans or animals caused by exposure to toxic substances, microorganisms, or any other pathogens.
- (b) The list shall be provided to all health care providers, physicians, pharmacists, laboratory directors, coroners, medical examiners, and veterinarians.

History: 2007, PL 30-11.

13.0210 Reporting requirement for reportable diseases or conditions.

- (a) Every health care provider, physician, pharmacist, laboratory director, coroner, medical examiner, and veterinarian having knowledge of any individual or animal affected by or suspected of being affected by a disease or condition declared reportable by the director shall report the incident or suspected incident of such diseases or condition to the department in writing or in the manner and within the time period specified by the director.
- (b) The director is authorized to require other persons to report to the Department reportable diseases or conditions dangerous to the public health. Any other person required to report diseases or conditions declared reportable must be given prior written notice of all diseases and conditions required to be reported.
- (c) Written reporting time requirements and methods shall be provided to every person required to report.
- (d) Any person not required to report who knows or suspects a case of reportable disease or condition may provide available information concerning the case to the department, especially where the case has not been previously reported as required.
- (e) The department shall:
- (1) Prescribe the time and manner for all person(s) responsible for reporting for each disease or other condition of public health importance.
 - (2) Classify each reportable disease and condition according to its nature and the severity of its effect on the public's health.
 - (3) Regularly maintain and revise the list of reportable diseases and conditions.
 - (4) Establish registries for reportable diseases and conditions.

(5) Fully disseminate reporting requirements to all persons required to report diseases or conditions.

(f) The director may enter into agreements or other arrangements with ASG agencies for receipt and sharing of information regarding reportable diseases or other conditions of public health importance.

(g) Any person who is required to report a disease or other condition of public health importance shall use ordinary skill in determining the presence of the reportable disease or condition. If the determination of the disease or condition is disputable and the disease or condition may have potential public health significance, the department shall request tests through a laboratory to help resolve uncertainty.

(h) Each person required to report shall transmit to the department any information requested by the department concerning the reporting of diseases or conditions. The department may require expedited reporting for designated diseases or conditions.

(i) In addition to the duty to report a required disease or condition, a pharmacist shall report any unusual variations in prescription rates, types of prescriptions, or pharmacy visits that may be potential causes or indicators of a condition of public health importance. Prescription-related events that require a report include, but are not limited to:

(1) An unusual increase in the number of prescriptions of antibiotics or other pharmaceuticals or sales of over-the-counter pharmaceuticals to treat conditions identified by the department; and

(2) Any prescription that treats a disease that is relatively uncommon.

(j) A veterinarian, livestock owner, veterinary diagnostic laboratory director, or other person having the care of animals shall report animals having or suspected of having any diseases or conditions that may be potential causes or indicators of a condition of public health importance.

(k) Sharing of information by the department on any reportable conditions shall be restricted to the information necessary for the treatment, control, investigation, and prevention of the disease or condition of public health importance.

History: 2007, PL 30-11.

13.0211 Penalty for failure to report required disease or condition.

(a) Any health care provider, physician, pharmacist, laboratory director, coroner, medical examiner, and veterinarian who refuses, neglects, or fails to report a required disease or condition within the time period specified by the director shall be guilty of a Class A misdemeanor.

(b) Any other person required to report but who refuses, neglects or fails to report a required disease or condition within the time period specified by the director shall be guilty of a misdemeanor. Upon conviction, the person is punishable by a fine not to exceed \$250.00

(c) No person may be punished or fined under this section if the person has not received written statements of diseases and conditions to be reported and the written procedures for reporting.

History: 2007, PL 30-11.

13.0212 Inspection and investigation of communicable disease or condition of public health importance.

Upon a complaint made or upon reasonable belief, supported by sufficient facts, that a condition of public health importance is present in any house or elsewhere and has not been reported, the department may make an inspection and investigation for the purpose of discovering whether any such disease exists.

History: 2007, PL 30-11.

13.0213 Epidemiologic investigation.

(a) The department may investigate conditions of public health importance through methods of epidemiological investigation. This includes identifying individuals who have been or may have been exposed to or affected by the condition, interviewing and testing those individuals, and examining facilities or materials that may pose a threat to the public's health.

(b) The department may ascertain the existence of a disease outbreak or epidemic, investigate potential sources of exposure or infection and ensure that they are subject to proper control measures, and define the distribution of the disease outbreak or epidemic.

(c) To fulfill these duties, the department may perform the following:

(1) Seek to identify all individuals thought to have been exposed to any agent that may be a potential cause of the disease outbreak, epidemic, or condition of public health importance.

(2) Counsel, interview, and test such individuals where needed to assist in the positive identification of those exposed or affected, and develop information relating to the source or spread of the disease or other condition of public health importance.

(3) For examination purposes, close, evacuate, or decontaminate any facility or decontaminate or destroy any material when it reasonably believes that such facility or material may endanger investigators, other individuals, or the public's health.

History: 2007, PL 30-11.

13.0214 Compulsory medical treatment.

The department is authorized to compel any individual who has or may have been exposed to a contagious disease that poses a significant risk or danger to others or the public's health to complete an appropriately prescribed course of medication (including through directly-observed therapy where appropriate) to treat the contagious disease, and to follow infection control provisions for the disease as follows:

(a) The compulsory medical treatment is reasonably calculated to prevent, control, or ameliorate a condition of public health importance that poses a significant risk or danger to others or the public's health;

(b) The individual(s) to be treated has or may have been exposed to a contagious disease that poses a significant risk or danger to others or the public's health; and

(c) The department personnel who examines or treats the individual(s) instructs the individual about measures for preventing reinfection and spread of the disease or condition.

History: 2007, PL 30-11.

13.0215 Quarantine and isolation.

(a) The director, or his designee, may order the isolation or quarantine of an individual or group of individuals in compliance with this section.

(b) The director shall adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:

(1) Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others and may include, but are not limited to, confinement to private homes or other private and public premises.

(2) Isolated individuals must be confined separately from quarantined individuals.

(3) The health status of isolated and quarantined individuals must be monitored regularly to determine if they continue to require isolation or quarantine.

(4) If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease he or she must promptly be removed to isolation.

(5) Isolation and quarantine must be immediately terminated when an individual poses no substantial risk of transmitting a contagious or possibly contagious disease to others.

(6) The needs of individuals who are isolated or quarantined shall be addressed in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, and competent medical care.

(7) Outside premises used for isolation and quarantine shall be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harms to individuals isolated and quarantined.

(8) To the extent possible, cultural and religious beliefs shall be respected in addressing the needs of individuals, and establishing and maintaining isolation and quarantine premises.

(c) Entry into isolation or quarantine premises. The department may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals. Any individual entering isolation or quarantine premises with or without authorization of the department may be isolated or quarantined where needed to protect the public's health.

(d) Temporary isolation and quarantine without notice. The director may temporarily isolate or quarantine an individual or groups of individuals through a written directive if delay in imposing the isolation or quarantine would significantly jeopardize the department's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.

(1) Content of directive. The written directive shall specify the following:

(A) The identity of the individual(s) or groups of individuals subject to isolation or quarantine;

(B) The premises subject to isolation or quarantine;

(C) The date and time at which isolation or quarantine commences; and

(D) The suspected contagious disease.

(2) Copies. A copy of the written directive shall be given to the individual to be isolated or quarantined. If the written directive applies to a group of individuals and it is impractical to provide individual copies, it may be posted in a conspicuous place in the isolation or quarantine premises.

(3) Petition for continued isolation or quarantine. Within ten (10) days after issuing the written directive, the director shall file or cause to be filed a petition for a Court order

authorizing the continued isolation or quarantine of the individual or groups of individuals. The petition should comply with the requirements of (e) (1) of this section.

(e) Isolation or quarantine with notice. The director may make a written petition to a Court for an order authorizing the isolation or quarantine of an individual or groups of individuals.

(1) Petition isolation or quarantine with notice. The petition shall specify the following:

(A) The identity of the individual(s) or groups of individuals subject to isolation or quarantine;

(B) The premises subject to isolation or quarantine;

(C) The date and time at which isolation or quarantine commences;

(D) The suspected contagious disease;

(E) A statement of compliance with the conditions and principles for isolation and quarantine of subsection (b) of this section; and

(F) A statement of the basis upon which isolation or quarantine is justified in compliance with this section. The petition shall be accompanied by the sworn affidavit executed by the director or the director's designee attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the Court's consideration.

(2) Notice. Notice to the individuals or groups of individuals identified in the petition shall be accomplished in accordance with existing rules of civil procedure.

(3) Hearing. A hearing should be held on any petition filed pursuant to this subsection as soon as practical after filing of the petition. In extraordinary circumstances and for good cause shown the director may apply to continue the hearing date on a petition filed pursuant to this section for up to five (5) days. The Court may grant the continuance in its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the need for quarantine or isolation, and other evidence.

(4) Order. The Court shall grant the petition if, by clear and convincing evidence, isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others.

(A) An order authorizing isolation or quarantine shall not exceed thirty (30) days unless continued by order of the Court.

(B) The order shall (i) identify the isolated or quarantined individuals or groups of individuals by name or shared or similar characteristics or circumstances; (ii) specify factual findings warranting isolation or quarantine pursuant to this section; (iii) include any conditions necessary to ensure that isolation or quarantine is carried out within the Territory purposes and restrictions of this section; and (iv) be served on affected individuals or groups of individuals in accordance with existing rules of civil procedure.

(f) Continuances. Prior to the expiration of an order issued pursuant to this act, the director may move to continue isolation or quarantine for additional periods not to exceed thirty (30) days each.

(g) Relief from isolation and quarantine. An isolated or quarantined individual or group of individuals may apply to a Court for an order to show cause why isolation or quarantine should not be terminated. The Court shall rule on the application to show cause as soon as practicable.

(h) Remedies for breach of condition. An isolated or quarantined individual or groups of individuals may request a hearing in the Court for remedies regarding breaches

of the conditions of isolation or quarantine. A request for a hearing shall not stay or enjoin an isolation or quarantine order.

(1) Where extraordinary circumstances justify the immediate granting of relief, the Court shall fix a date for hearing on the alleged matters as soon as practicable.

(2) Extensions. In any proceedings brought for relief from isolation or quarantine, the director may move the Court to extend the time for a hearing based on extraordinary circumstances. The Court may grant the extension giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the need, and other evidence.

(3) Proceedings. If parties cannot personally appear before the Court, proceedings may be conducted by their legal representatives and be held in a location or via any means that allows all parties to fully participate. The Court may order the consolidation of individual claims into group claims where:

(A) The number of individuals affected is so large as to render individual participation impractical;

(B) There are questions of law or fact common to the individual claims or rights to be determined;

(C) The group claims or rights are typical of the affected individuals' claims or rights; and

(D) The entire group can be adequately represented.

History: 2007, PL 30-11.

13.0216 Health information system—statistics--surveillance activities-- sources of information.

(a) The department shall administer a health information system to collect, use and analyze health, medical and vital information for the Territory. The health information system may include, but is not limited to, identifiable health information, non-identifiable health information, vaccination records, testing results, examination results, surveillance activity results, cancer registry and any and all other information needed, used, or acquired to protect the public health or perform essential public health services and functions.

(b) The health information system may include system elements located in, and provide information services to, LBJ Tropical Medical Center under cooperative agreements, or contracts, approved by the director and the hospital authority board.

(c) The department is authorized to collect, analyze, and maintain databases of identifiable health information and non-identifiable health information related to:

(1) Risk factors identified for specific conditions of public health importance;

(2) Morbidity and mortality rates for conditions of public health importance;

(3) Community indicators relevant to conditions of public health importance; and

(4) Any other data needed to accomplish or further the mission or goals of public health, or provide essential public health services and functions.

(d) The department may coordinate the surveillance of zoonotic diseases.

(e) The department is authorized to obtain information from federal, ASG agencies; health care providers or other private and public organizations.

(1) The department may use information available from other governmental and private sources, reports of hospital discharge data, information included in death certificates, other vital statistics, environmental data, and public information.

(2) The department may request information from or inspect health care records maintained by health care providers that identify patients or characteristics of patients with reportable diseases or other conditions of public health importance.

(f) Identifiable health information may only be acquired, used, disclosed, and stored consistent with the requirements of this act. Non-identifiable data may be acquired, used, disclosed, or stored for any purpose or in any manner.

History: 2007, PL 30-11.

13.0217 Acquisition of identifiable health information.

(a) Identifiable health information shall not be secretly acquired by the department.

(b) The department shall only acquire identifiable health information where:

(1) The acquisition relates directly to a public health purpose (including analysis and evaluation of conditions of public health importance and evaluation of public health programs);

(2) The acquisition is reasonably likely to achieve such purpose, taking into account the provisions of this act and other governing laws, and the availability of resources or means to achieve such purpose; and

(3) The public health purpose cannot otherwise be achieved as well or better with non-identifiable health information.

(c) Prior to implementation of a determination by the department to acquire or store identifiable health information, the department shall announce its intentions to acquire or store identifiable health information and the purposes for which the information will be used. This announcement shall be made through public written notice distributed and posted in a manner as will reasonably inform members of the affected community.

(1) Such notice shall not identify any individual who is or may be the subject of identifiable health information.

(2) Where Territory or local law requires counseling services regarding a reportable disease, such counseling services shall include information that the disease is reportable to the Department and a description of the purposes for which the individual's identifiable health information will be used by the department.

(d) The department shall not acquire identifiable health information from another federal or ASG agency unless the acquisition is consistent with the requirements of this act and other controlling law.

History: 2007, PL 30-11.

13.0218 Use of identifiable health information.

(a) Identifiable health information shall be used by the department:

(1) Solely for public health purposes that are directly related to the purpose for which the information was acquired, including analysis and evaluation of conditions of public health importance and evaluation of public health programs;

(2) If the use is limited to the minimum amount of information which the department using the information reasonably believes is necessary to accomplish the public health purpose; and

(3) Such uses are made pursuant to assurances of protections through the execution of a confidentiality statement. The confidentiality statement shall require any person receiving such information to adhere to protections for the privacy and security of the

information equivalent to or greater than such protections provided in this act and other controlling law.

(b) If in compliance with subsection (a), the department may use identifiable health information for public health, epidemiological, medical, or health services research provided that:

(1) It is not feasible to obtain the written authorization of the individual who is the subject of the information;

(2) Identifiable information is necessary for the effectiveness of the research project;

(3) The minimum amount of information necessary to conduct the research is used;

(4) The research utilizing the identifiable health information will likely contribute to achieving a public health purpose;

(5) The information is made non-identifiable at the earliest opportunity consistent with the purposes of the research project and expunged after the conclusion of the project;

(c) Identifiable health information shall not be used by the department for commercial purposes;

(d) The Department shall acquire, use, disclose, and store identifiable health information in a confidential manner that safeguards the security of the information.

(e) Identifiable health information whose use by the department no longer furthers the public health purpose for which it was acquired shall be expunged in a confidential manner.

History: 2007, PL 30-11.

13.0219 Disclosure of identifiable health information.

(a) Identifiable health information is not public information, and may not be disclosed without the written authorization of the individual (or legal representative) who is the subject of the information, except as provided in this act and other controlling law.

(b) Any written authorization shall be dated and shall specify to whom the disclosure is authorized, the general purpose for such disclosure, and the time period in which the authorization for the disclosure is effective.

(1) An individual may revoke a written authorization in writing at any time. The individual is responsible for informing the person who originally received the authorization that it has been revoked.

(2) If the authorization does not contain an expiration date or has not previously been revoked, it automatically expires six months after the date it is signed.

(3) A general authorization for the disclosure of health-related information shall not be construed as written for the disclosure of identifiable health information unless such authorization also complied with this act.

(4) When the individual is not competent or otherwise legally unable to provide written authorization, the written authorization may be provided by the individual's legal representative. For the purposes of this act, a minor under the age of eighteen years is unable to give written authorization.

(c) Identifiable health information shall be disclosed with the written authorization of the individual who is the subject of the information to any person and for any purpose for which the disclosure is authorized.

(1) Disclosures shall be limited to the minimum amount of information that the person making the disclosure reasonably believes is necessary to accomplish the purpose of the disclosure.

(2) Disclosures shall be accompanied or followed by a statement in writing concerning the department's disclosure policy, which shall include the following or substantially similar language: "This information has been disclosed to you from confidential public health records protected by American Samoa and federal law. Any further disclosure of this information in an identifiable form may be prohibited without the written authorization of the individual who is the subject of the information or as otherwise permitted by federal or American Samoa law. Unauthorized disclosure of this information may result in significant criminal or civil penalties."

(d) Disclosures without written authorization. Identifiable health information may be disclosed without the written authorization of the individual who is the subject of the information where such disclosures are made:

(1) Directly to the individual;

(2) To appropriate federal or ASG agencies or authorities as required for authorized by federal or American Samoa law;

(3) To health care personnel to the extent necessary in a medical emergency to protect the health or life of the individual who is the subject of the information from serious, imminent harm;

(4) To report information in a certificate of death, autopsy report, or related documents prepared under applicable laws or regulations; or

(5) To identify a deceased individual or the individual's manner of death, or provide necessary information about a deceased individual who is a donor or prospective donor of an anatomical gift.

(e) The rights of a deceased individual as provided by this act may be exercised for a period of two years after the date of death by one of the individuals in the following order or priority, subject to any written authorization for another person to act by the decedent:

(1) An executor or administrator of the estate of a deceased individual, or one soon to be appointed in accordance with a will or other legal instrument;

(2) A surviving spouse or domestic partner;

(3) An adult child; or

(4) A parent.

(f) No person to whom identifiable health information has been disclosed shall disclose the information to another person except as authorized by this act or other controlling law. This subsection shall not apply to:

(1) The individual who is the subject of the information;

(2) The individual's legal representative where the individual is unable to give written authorization; or

(3) Any person who is specifically required by federal or American Samoa law to disclose the information.

(g) The department shall keep written or electronic record of any of its disclosures of identifiable health information authorized by this act. This record shall be treated as identifiable health information for the purposes of this act. This record shall be maintained by the department for a period of ten years, even if the identifiable health information disclosed is no longer in the department's possession. The record of disclosures shall include the following information:

(1) The name, title, address, and institutional affiliation, if any, of the person whom identifiable health information is disclosed;

(2) The date and purpose of the disclosure;

(3) A brief description of the information disclosed; and

- (4) The legal authority for the disclosure.

History: 2007, PL 30-11.

13.0220 Security safeguards for identifiable health information.

(a) When the department receives any identifiable health information disclosed from any source including any federal or ASG agency, other than the individual (or legal representative) who is the subject of the information, the department shall take appropriate measures to protect the security of such information, including:

- (1) Maintaining such information in a physically secure environment, that:
 - (A) Minimizes the physical places in which such information is used or stored; and
 - (B) Prohibits the use or storage of such information in places where the security of the information may likely be breached or is otherwise significantly threatened;
- (2) Maintaining such information in a technologically secure environment;
- (3) Limiting access to such information to those persons who have a demonstrable need to access such information;
- (4) Reducing the length of time that such information is used or stored in a personally-identifiable form to that period of time that is necessary for the use of the information;
- (5) Eliminating unnecessary physical or electronic transfers of such information;
- (6) Expunging duplicate, unnecessary copies of such information;
- (7) Developing and distributing written guidelines concerning the preservation of the security of such information;
- (8) Assigning personal responsibility to persons who acquire, use, disclose, or store such information for preserving its security;
- (9) Providing initial and periodic security training of all persons who acquire, use, disclose, or store such information;
- (10) Thoroughly investigating any potential or actual breaches of security concerning such information;
- (11) Imposing disciplinary sanctions for any breaches of security when appropriate; and
- (12) Undertaking continuous review and assessment of security standards.

(b) Wherever identifiable health information is accessible by the department, there shall be prominently displayed a notice in writing concerning the agency's disclosure policy, which shall include the following or substantially similar language: "Identifiable health information contains health-related information about individuals which may be highly-sensitive. This information is entitled to significant privacy protections under federal and American Samoa law. The disclosure of this information outside the Department of Public Health in an identifiable form is prohibited without the written consent of the individual who is the subject of the information, unless specifically permitted by federal or American Samoa law. Unauthorized disclosures of this information may result in significant criminal or civil penalties."

(c) All department personnel or other persons having authority at any time to acquire, use, disclose, or store identifiable health information shall:

- (1) Be informed of their personal responsibility for preserving the security of identifiable health information;
- (2) Execute a confidentiality statement prior to entering the premises, or as soon thereafter as possible, pursuant to their review of written guidelines consistent with this act concerning the preservation of the security of such information;

(3) Fulfill their personal responsibility for preserving the security of identifiable health information to the degree possible; and

(4) Report to the director, or his designee, any known security breaches or actions that may lead to security breaches. The identity of any person making a report under this subsection shall not be revealed, without the consent of the person making the report, to anyone other than the director, any investigating officials appointed by the director, or law enforcement officers.

(d) The department shall prepare an annual report concerning the status of security protections of identifiable health information, which shall be distributed to department personnel.

History: 2007, PL 30-11.

13.0221 Individual access to identifiable health information.

(a) Within fourteen days of the receipt of a request to review identifiable health information, the department shall provide the requestor an opportunity during regular business hours to inspect copies of such information in the possession of the department, which concerns or relates to the requestor.

(b) Within ten days of the receipt of a request for copies of a requestor's identifiable health information, the department shall provide, without charge, copies of identifiable health information in the possession of the department that the requestor is authorized to inspect.

(c) Upon request, the department shall provide an explanation of any code, abbreviation, notation, or other marks appearing in the identifiable health information. The department is not responsible for producing or reformulating identifiable health information, solely for the purposes of clarification, in other than its original form.

(d) Reasonable limitations may be placed on the time, place, and frequency of any inspection and copying requests. The department may ask to review the identifiable health information with the requestor upon inspection, although such review shall not be a prerequisite to providing the information.

(e) Any information contained in the identifiable health information of the requestor that relates to the health status or other confidential information of other individuals shall be deleted for the purposes of inspection and copying.

(f) Any information contained in the identifiable health information of the requestor that is not related to the requestor's health status may be deleted for the purpose of inspection and copying.

History: 2007, PL 30-11.

13.0222 Denial of request by department.

(a) The department may deny a requestor the opportunity to inspect identifiable health information in the possession of the department or may deny a request for copies of such information if:

(1) The department can show by clear and convincing evidence that the review of the identifiable health information will cause substantial and identifiable harm to the requestor or others that outweighs the requestor's right to access the information;

(2) A parent or legal guardian has requested access to identifiable health information concerning an individual over the age of eighteen years who is the subject of the

information and the individual objects to such access of the information within seven days of receipt of written notice of the request by the department in possession of the information; or

(3) The information is compiled principally in anticipation of, or for use in, a legal proceeding.

(b) If the department denies a request to inspect or copy identifiable health information, it shall notify the requestor in writing of the reasons for denying such request, including that the department does not possess any identifiable health information which is subject to the request.

(c) A requestor may appeal such decisions under administrative review procedures under the American Samoa Administrative Code.

History: 2007, PL 30-11.

13.0223 Accuracy and correction of identifiable health information.

(a) The department shall reasonably ensure the accuracy and completeness of identifiable health information.

(b) After inspection or review of copies of identifiable health information, a requestor may request that the department correct, amend, or delete erroneous, incomplete, or false information.

(c) The department shall correct, amend, or delete erroneous, incomplete, or false information within fourteen days of a request provided that it determines such modification is reasonably supported. The requestor has the burden of proving that information needs to be corrected, amended, or deleted.

(d) The requestor shall be notified in writing by the department of any corrections, amendments, or deletions made, or, in the alternative, the reasons for denying any request in whole or part.

(e) A requestor may appeal any decision of the Department denying a request to correct, amend, or delete erroneous, incomplete, or false information under administrative review procedures as promulgated by the department.

(f) A brief, written statement from the requestor challenging the veracity of the identifiable health information shall be retained by the department for as long as the information is possessed. The department shall make a notation of the disputed entries in the requestor's identifiable health information, including the original language and the requestor's proposed change. This statement shall be provided to any person who is authorized to receive the identifiable health information.

(g) The department shall take reasonable steps to notify all persons indicated by the requestor, or others for whom known acquisitions or disclosures have previously been made, of corrections, amendments, or deletions made to identifiable health information.

History: 2007, PL 30-11.

13.0224 Public health nuisances.

(a) It is unlawful for any person to create, aggravate, or allow the existence of a public health nuisance.

(b) The department may immediately and thoroughly investigate any suspected public health nuisance upon receiving a complaint of its existence or when there is probable cause to believe that nuisance exists within the Territory.

(c) The department may issue an order to avoid, correct, or remove, at the owner's expense, any property or condition that the department determines to be a nuisance.

(1) The order shall specify the nature of the nuisance and the method(s) to abate the nuisance, including:

(A) To close, direct, and compel the evacuation of, or decontaminate or cause to be decontaminated any real property, building or structure as needed; or

(B) To decontaminate or cause to be decontaminated, or destroy, any material, goods, or conditions.

(2) The order shall designate a reasonable time in which the nuisance must be abated.

(3) If a property owner or occupant does not comply with the order within the specified time, the department may cause the nuisance to be removed or abated at the owner or occupant's expense.

(4) Whenever the removal or abatement of a nuisance requires immediate action by the department, the department may pay the cost of removal or abatement and seek reimbursement for expenses from the responsible persons.

(5) If the person responsible for a nuisance refuses to pay or reimburse expenses incurred by the department, expenses may be:

(A) Assessed against affected real property, building or structure as a lien;

(B) Collected from rents paid on the real property, building or structure, pursuant to a Court order obtained by the department; or

(C) Collected in the same manner as personal taxes assessed by the Territory.

(6) An occupant or other person who caused or permitted a nuisance to exist is liable to the owner of the premises for the amount paid by the owner or assessed against the property, building or structure.

History: 2007, PL 30-11.

13.0225 Administrative searches and inspections to determine existence of a public health nuisance.

(a) Upon consent of the owner, custodian or occupant, department personnel may enter any property, building or structure at any reasonable time to inspect, investigate, evaluate, conduct tests, or take specimens or samples for testing as may be reasonably necessary to determine compliance with any law or regulation.

(b) If the department personnel are denied entry, the Administrative Law Judge is authorized to issue an administrative search warrant and the department may seek an administrative search warrant from the Administrative Law Judge authorizing the investigation, evaluation, inspection, testing, or taking of specimens or samples for testing.

(c) Authorized department personnel may enter any public place to inspect, investigate, evaluate, conduct tests, or take specimens or samples for testing as may be reasonably necessary to determine compliance with the provisions of any law or regulation administered by the department.

History: 2007, PL 30-11.

13.0226 Vaccinations--Vaccination program.

(a) The department may require vaccination of any individual within their jurisdictions to prevent the introduction or spread of an infectious disease or other condition of public

health importance. The department may make rules requiring and governing immunization against typhoid fever, pertussis, diphtheria, tetanus, measles, mumps, hepatitis-B, and any other communicable disease, if a suitable immunizing agent is available for the disease and a need for immunization against it exists within the Territory.

(b) Requirements for conducting vaccination programs. In administering any vaccine or vaccination program, the department shall adhere to the following requirements:

(1) Informed consent. No vaccine or vaccination program shall be administered without the prior informed consent of the individual (or legal representative) to whom the vaccine is being administered, except as otherwise provided in this act;

(2) Validity. The department must employ an approved, federally-licensed vaccine for the infectious disease or other condition of public health importance;

(3) Justification. All vaccination programs should further legitimate public health purposes by addressing a condition of public health importance that may be avoided, alleviate, or made less contagious through safe and effective vaccination; and

(4) Pre-vaccination information. Prior to vaccination, the individual (or legal representative) must be informed of the nature, purposes, benefits, risks, and possible results of the vaccination.

(c) Provision of vaccines. Vaccinations required of any person under this act shall be administered by duly licensed physicians, paramedical personnel, registered nurses, pharmacists working under a physician's direction, or an authorized, trained representative of the department provided any individual administering a vaccine:

(1) Is competent in the administration of the vaccine, including the knowledge of indications and contraindications of the vaccine, and recognition and treatment of any emergency reactions to the vaccine that may endanger the health or life of the recipient; and

(2) Is competent to recognize an adverse effect or an emergency condition or reaction caused by the vaccine to be able to.

(A) refer the recipient to the appropriate health care provider for treatment of the adverse effect or emergency condition or reaction; or

(B) operate and administer medications, equipment and treatment of the adverse effect or emergency condition or reaction.

(d) Any person authorized to perform vaccinations under this act shall certify on a form developed by the department that a named individual has been vaccinated on a given date for specific conditions in accordance with applicable rules and regulations. This certification of vaccination shall be the principal means of demonstrating compliance with vaccination requirements. The person providing the vaccination shall file a copy of the certification in the vaccination registry.

(e) The department shall collect epidemiological information to establish and maintain a comprehensive vaccination registry to aid, coordinate, and promote effective and cost efficient disease prevention and control efforts. The registry shall serve as a repository of accurate, complete, and current vaccination records in the Territory. The department shall utilize information in the registry to notify individuals (or their legal representatives) concerning the need for and access to a particular type of vaccination pursuant to published vaccination schedules adopted by the Department.

(f) Except as otherwise provided by law, no individual shall be admitted to a public or private school, or licensed child day care facility, in the Territory who has not been age-appropriately vaccinated for any infectious diseases or other conditions of public health

importance as required by the department. To protect children from infectious diseases consistent with the recommendations of the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP) and the American Academy of Pediatrics Committee, the department shall provide for the vaccination of individuals seeking admission to public or private schools, or licensed child day care facilities in the Territory as follows:

(1) A basic series of vaccinations to be administered consistent with the published schedule of vaccinations recommended by the Centers for Disease Control and Prevention for all individuals at any age or level of education as determined by the department prior to enrollment in school or licensed child care facility; and if a series of vaccinations are required, then the series shall begin not later than the time of enrollment and shall be completed within a reasonable time as determined by the department.

(2) Any individual determined to need vaccinations by the department that fails to be properly vaccinated shall be excluded from school or day care.

(3) The department shall provide written notification to the parent or legal guardian of a minor attendee regarding a pending exclusion under this subsection.

(4) An attendee shall be exempt from the department vaccination requirements upon presentation of a certification of vaccination or where excepted from vaccination under this subsection (g).

(g) No individual shall be required to be vaccinated pursuant to this act when:

(1) The individual has an existing physical disability or reasonable certainty of a reaction detrimental to that individual that may contraindicate vaccination based on the recommendations of the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP) and the American Academy of Pediatrics Committee;

(2) The individual has produced medical confirmation of experiencing the natural disease against which the vaccination protects, thus rendering the administration of the vaccine ineffectual;

(3) The individual has produced laboratory confirmation of the presence of existing adequate immunity; or

(4) The individual (or legal representative) objects in a written, signed affidavit issued pursuant to a Court order on the basis that the vaccination interferes with the free exercise of the individual's (or legal representative's) sincere religious beliefs. However, no objection shall be recognized when, in the opinion of the director, there is danger of an epidemic or serious outbreak of any communicable disease.

(h) A record of the immunization shall be maintained by the physician if in private practice, or the department if the vaccination is administered by an authorized representative of the department. Records of individuals attending or seeking to attend school in American Samoa shall be available to the Department of Education for school entry requirements.

(i) A person who administers or authorizes the administration of a vaccine under this act is immune from criminal or civil liability for:

(1) Any injury caused by the vaccine if the vaccination was required by the department and the administration did not involve willful misconduct or gross negligence; or

(2) The failure to vaccinate because of the failure or refusal of a legal representative to consent to the vaccination.

(j) The department shall develop and maintain facilities to safely and adequately preserve and store vaccine.

History: 2007, PL 30-11.

13.0227 Testing--examination--screening.

(a) The department may establish and administer testing, examination, and screening procedures or programs to identify conditions of public health importance among individuals or communities in the Territory.

(b) In conducting any test, exam, or screening procedure or program, the department shall adhere to the following requirements:

(1) No test, exam, or screening shall be conducted without the prior informed consent of the individual (or legal representative) to whom the test or exam is being administered, except as otherwise provided in this act or other Territory law;

(2) No tests or exams shall be administered unless there is available a valid and reliable test or exam for the condition of public health importance;

(3) No screening shall be conducted unless the screening uses scientifically-sound methods that have an adequate predictive value;

(4) All testing, examination, or screening programs should identify a condition of public health importance that poses a threat to an individual or the public's health and may be avoided, cured, alleviated, or made less contagious through safe and effective treatment, modifications in individual behavior, or public health interventions;

(5) Prior to testing, examination, or screening, the department must explain to the individual (or legal representative) the nature, scope, purposes, benefits, risks, and possible results of the test, exam, or screening; and

(6) In conjunction with or directly after the dissemination of the results of a test, exam, or screening, the department must fully inform the individual (or legal representative) of his or her results. If appropriate, the Department should provide counseling or inform the individual where such counseling services are available.

(c) The department may require testing or medical examination of any individual who has or may have been exposed to a contagious disease that poses a significant risk or danger to others or the public's health.

(d) The department may establish compulsory screening programs for conditions of public health importance that pose a significant risk or seriously threaten the public's health.

(e) The department may establish conditional screening programs when necessary to achieve an important public health objective. A conditional screening program should include:

(1) All individuals of a defined class are subjected to the screening, test or examination as a condition of participating in or receiving a service, privilege or benefit.

(2) If an individual refuses to undergo the screening, test or exam, the Department may prevent that individual from participating in or receiving the service, privilege or benefit.

(f) The department may establish routine, regular, and ongoing screening programs for conditions of public health importance. All individuals of a defined class are subjected to the screening, test or exam unless they choose to "opt-out" (individuals refuse to consent to the screening, test or examination).

History: 2007, PL 30-11.

13.0228 Department agents and inspectors.

The director shall appoint a suitable number of agents and inspectors to enforce all public health laws and regulations.

History: 2007, PL 30-11.

13.0229 Counseling and referral services program.

(a) The director may establish voluntary, confidential programs for counseling and referral services (CRS). These services shall be available and easily accessible to all individuals with, or possibly exposed to, a contagious disease as determined by the director.

(b) If the director establishes a CRS, then the department shall follow the following guidelines for a counseling and referral services program:

(1) All information disclosed to a CRS counselor or health care provider in the context of CRS is confidential. Contact names or contact data may be used only for purposes of surveillance, epidemiologic investigation, diagnosis, treatment, and notification by the department.

(2) Any individual with a contagious disease who voluntarily participates in a CRS program shall be notified that any identified contacts may be informed of their potential exposure to the contagious disease.

(3) A CRS counselor may notify a contact after obtaining the informed consent of the individual with the contagious disease who voluntarily provided the contact's name, unless:

(A) The CRS counselor reasonably believes that the individual does not plan to notify known contacts, whereby the counselor may notify those contacts without individual informed consent; or

(B) The CRS counselor reasonably believes that the individual is at a significant risk of harm should notification be made to the contact.

(4) Any disclosure of information about exposure to a contagious disease to a contact by the CRS counselor shall be made in person (where possible and in a manner that attempts to protect the privacy of the individual with the contagious disease as well as the contact. A CRS counselor may not disclose, for example:

(A) The name or other identifying information of the individual who gave the contact's name; or

(B) The date or period of the contact's exposure.

(5) A CRS program shall provide counseling, testing, diagnosis, treatment, or referral services to an individual with a contagious disease regardless of whether the individual discloses the names of any contacts.

(6) Where not otherwise notified, CRS counselors shall inform any contact of the:

(A) Nature of the contagious diseases;

(B) Methods of transmission and prevention of the diseases;

(C) Location information for testing or treatment sites (where available); and

(D) Existence of local support groups, mental health services, and medical facilities.

(7) If an individual with a contagious disease chooses to notify a contact, he or she should be encouraged to provide the same information as stated above, and be provided counseling. The CRS counselor should use reasonable efforts to verify that the contact was actually notified.

(c) A CRS program shall routinely train and evaluate the performance of counselors and other program personnel to ensure that high quality services are being provided.

History: 2007, PL 30-11.

13.0230 Relationships between the department and federal agencies, ASG agencies, public and private sector partners and volunteers.

(a) The director, or his designee, may seek to establish working relationships with federal agencies, ASG agencies, public and private sector partners and volunteers to aid and assist in the provision of essential public health services and functions.

(b) The director may form an agreement with any federal agencies, ASG agencies, public and private sector partners and volunteers to coordinate the provision of essential public health services and functions. Among other purposes, these agreements may work to:

- (1) Develop, test, or demonstrate solutions for specific public health needs;
- (2) Conduct public health needs assessments and studies related to public health or health care issues concerning individuals located within the Territory;
- (3) Provide for data sharing;
- (4) Provide for collaborative development of public health plans;
- (5) Encourage and support any other activity that will assist the Department to improve or maintain the public's health;
- (6) Dissemination of information and training regarding the appropriate use of clinical preventive practice guidelines;
- (7) Provision of information regarding the services and resources available related to patient management or medical care practice;
- (8) Development of medical care and patient services related to the provision of essential public health services and functions;
- (9) Development and dissemination of data reporting methods and systems concerning the performance of public health diagnostic and investigative services and functions; and
- (10) Development and dissemination of resources and tools for measuring performance regarding the provision of essential public health services and functions.

(c) For the purposes of this section, the department shall coordinate the efforts of any person and the department. The department may use any or all of the following tools for the purpose of coordinating activities:

- (1) Ongoing and regular communication through electronic or other means;
- (2) Incorporation of public and private sector partners into the public health planning process;
- (3) Village or Territory-wide conferences or programs to share information or pursue plans for assessment, policy development or strategy, or assurance activities; or
- (4) Designation of leading collaborators within specific villages, topical, or practice areas that can facilitate coordination efforts.

History: 2007, PL 30-11.

13.0231 Disbursement of moneys.

For the purpose of carrying into effect this act relating to public health, the department may apportion and disburse all sums of money received including but not limited to sums that are appropriated by the Fono, or granted through federal health grants from the United States Government, or the World Health Organization, or from any other source.

History: 2007, PL 30-11.

13.0232 Community health centers.

The department shall administer and supervise community health center facilities and functions on Tutuila Island, Manu'a Islands, and Swains Island. The number and location of community health centers, and the scope of services provided shall be determined by the director and the department based on service area population, community need, and available resources.

History: 2007, PL 30-11.

13.0233 Demonstration projects.

(a) The department may declare one or more community health centers as demonstration projects.

(b) Other provisions of the American Samoa Code Annotated notwithstanding, the scope of services, standards of quality and performance, degree of autonomy, organization and staffing models, and services fee structure, of community health centers declared demonstration projects shall be determined by the director, with the approval of the Governor, during the period a community health center is declared a demonstration project.

History: 2007, PL 30-11.

13.0234 Development of a public health workforce.

(a) The department may provide voluntary accreditation programs for cooperating ASG agencies, public and private sector partners and volunteers based on the ability of a person or agency assisting the department in providing essential public health services and functions.

(b) The department and the director may identify and encourage community or village leaders to work through the department to develop, administer, and fulfill the requirements of this act and ensure the efficient and expedient providing of essential public health services and functions.

(c) Consistent with any national system of public health workforce certification or credentialing, the department may recognize, adopt or administer certification or credentialing programs for department personnel, ASG agencies, public and private sector partners and volunteers. These programs should be designed to develop knowledge, skills, and abilities in relevant and contemporary public health practice areas, and may be based on:

(1) Basic, core, or technical competencies (and corresponding curriculum) for public health workers; or

(2) Professional codes for public health professionals.

(d) The department may directly, or in conjunction with educational institutions or ASG agencies, make available or assure effective programs, continuing education, or other tools, including distance learning, internet or similar media components, for training ASG agency personnel, public and private sector partners and volunteers. Any person assisting the department may be required by the department to meet minimal training requirements to assist the individual in providing essential public health services and functions.

History: 2007, PL 30-11.

13.0235 Incentives, evaluations and recognition for public health workforce.

(a) The department may provide a voluntary accreditation program for ASG agencies, public or private sector partners or volunteers in various areas concerning public health including providing essential public health services and functions.

(b) Any accreditation program under this section shall be as follows:

(1) The accreditation program shall be administered by the department;

(2) Each accreditation program may include one or more areas or topics appropriate for the purpose of this section;

(3) Participation by the members or employees of any entity or individual referred to in (a) above shall be voluntary and without any form or type of compensation for the participants time, effort, or participation;

(4) The department shall attempt to have each accreditation program instructed by employees of the department knowledgeable in the topic or by a volunteer knowledgeable in the topic; and

(5) The department may award certificates or other indicia of participation or completion to any entity or individual referred to in (a) above.

(c) The department may set incentives to meet public health workforce accreditation standards or goals, including:

(1) Organizational accountability awards;

(2) Recognition for department personnel, ASG agencies, public and private sector partners and volunteers; and

(3) Other development initiatives.

History: 2007, PL 30-11.

13.0236 Maintenance and inspection of food records.

(a) If the director or department personnel have a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals, each person who manufactures, processes, packs, distributes, receives, holds, or imports such article shall, at the request of an officer or employee duly designated by the director, permit such officer or employee, upon presentation of appropriate credentials and a written notice to such person, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and copy all records relating to such article that are needed to assist the director in determining whether the food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. The requirement under the preceding sentence applies to all records relating to the manufacture, processing, packing, distribution, receipt, holding, or importation of such article maintained by or on behalf of such person in any format (including paper and electronic formats) and at any location.

(b) The director shall take appropriate measures to ensure that there are in effect effective procedures to prevent the unauthorized disclosures of any trade secret or confidential information that is obtained by the director pursuant to this section.

History: 2007, PL 30-11.

13.0237 Immunities.

The director, the department, and department personnel, except in cases of gross negligence or willful misconduct, shall not be liable for the death of or any injury to individuals, or damage to property, as a result of complying with or attempting to comply with the act or any rule or regulations promulgated pursuant to the act. Furthermore, nothing in the act shall be construed to impose liability on the department for the acts or omissions of a public or private sector partner or volunteers.

History: 2007, PL 30-11.

13.0238 Severability.

The provisions of this act are severable. If any provision of this Act or its application to any person or circumstances is held invalid in a Court of competent jurisdiction, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application.

History: 2007, PL 30-11.

13.0239 Civil Enforcement.

The department may maintain a civil action against any person to enforce compliance with or violations of the act.

History: 2007, PL 30-11.

13.0240 Legal representation of department and/or director.

Legal representation for the department shall be provided by the Attorney General. The director may retain and hire one or more private attorneys when needed only after determination by the attorney general that a *bona fide* need to hire a private attorney exists, and the attorney general has concurred with the hiring of said private attorney.

History: 2007, PL 30-11.

13.0241 Adoption, amendment and revisions of regulations.

(a) The director shall adopt regulations required by and to implement this act and any other laws for the proper and expedient operation of the Department and to carry out the purpose of this act.

(b) The director shall make such rules as directors deems necessary for the public health and safety inspection including, but not limited to:

(1) Nuisances, foul or noxious odors, gases, vapor, waters in which mosquitoes breed or may breed, sources of filth, and causes of sickness or disease, within the respective districts of the Territory, and on board any vessel;

(2) Adulteration and misbranding of food or drugs;

(3) Location, air space, ventilation, sanitation, drainage, sewage disposal and other health conditions of buildings, Courts, construction projects, excavations, pools, watercourses, and areas;

(4) Fish and fishing;

(5) Interments and dead bodies;

(6) Disinterment of dead human bodies, including the exposing, disturbing, removing or disturbing after due interment of any receptacle, coffin, or container holding human

remains or a dead human body or part thereof and the issuance and terms of permits for the aforesaid disinterment of dead human bodies;

(7) Cemeteries and burying grounds;

(8) Hospitals and freestanding outpatient clinics;

(9) Any place or building where noisome or noxious trades or manufactured are carried on, or intended to be carried on;

(10) Milk;

(11) Poisons and hazardous substances, the latter term including, but not limited to, any substance or mixture of substances which (A) is corrosive, (B) is an irritant, (C) is a strong sensitizer, (D) is inflammable, or (E) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(12) Pig sties and chicken ranches;

(13) Places of business, industry, employment, commerce, and processes, materials, tools, machinery, and methods of work done therein, and places of public gathering, recreation, or entertainment;

(14) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manufactured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;

(15) Food, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale or for consumption or use of any food, drug, or cosmetic;

(16) Sources of ionizing radiation;

(17) Medical examination, vaccination, re-vaccination, and immunization of school children. No child shall be subjected to such medical examination, vaccination, re-vaccination, or immunization, whose parent or guardian shall in writing object thereto on grounds that such requirements are not in accordance with the religious tenets of an established church of which he is a member or adherent, but no such objection shall be recognized when, in the opinion of the department there is danger of an epidemic or serious outbreak of any communicable disease;

(18) Disinfecting of aircraft entering or within the Territory as may be necessary to prevent the introduction, transmission, or spread of disease or the introduction or spread of any insect or other vector of significance to health;

(19) Fumigation that in the opinion of the department may be lethal, poisonous, noxious, or dangerous to human life.

(c) The director and department may require such certificates, permits, or license as it may deem necessary to adequately regulate the conditions or businesses referred to in this act.

(d) The director may amend or revise such rules from time to time. All regulations adopted and any and all amendments or revisions to the regulations shall be made in accordance with 4.1001 et seq., A.S.C.A.

History: 2007, PL 30-11.

Chapter 03

AMERICAN SAMOA EMERGENCY HEALTH POWERS ACT

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13.0301 Short title.

This chapter shall be known as, and may be cited as, the American Samoa Emergency Health Powers Act.

History: 2007, PL 30-11.

13.0302 Purposes.

The purpose of this act is to:

(a) Establish the parameters and authority of the Department of Health and of the director to develop and implement a comprehensive response to events or occurrences of potential or actual public health emergencies through formal declarations and triggering of special public health powers during an event or occurrence of a public health emergency;

(b) Promote and build strong relationships between the department and federal and ASG agencies, public and private sector partners, volunteers, and any other person or entity regarding a response to a potential or actual public health emergency;

(c) Promote cooperation and formal collaborative agreements between the department and federal and ASG agencies, public and private sector partners, volunteers, and any other person or entity regarding a response to a potential or actual public health emergency;

(d) Address privacy and security issues arising from any response of the Department to events or occurrences of potential or actual public health emergencies.

History: 2007, PL 30-11.

13.0303 Definitions.

As used in this act, terms shall have the same meaning as stated in the American Samoa Public Health Act unless defined below:

(1) “Act” means the American Samoa Emergency Health Powers Act.

(2) “Bioterrorism” means the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism.

(3) “Contaminated material” means wastes or other materials exposed to or tainted by chemical, radiological, or biological substances or agents.

(4) “Department” means the Department of Health.

(5) “Director” means the director of the Department of Health.

(6) “Event or occurrence” means an incident, situation, or episode.

(7) “Health care facility” means any institution, building, or agency or portion thereof, whether public or private (for-profit or nonprofit) that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual in American Samoa.

(8) “Public health emergency” means the declaration by the Governor of a crisis or emergency situation requiring a response to an event or occurrence or imminent threat of an illness or health condition that:

(A) Is believed to be caused by any of the following:

(i) Bioterrorism;

(ii) The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; or

(iii) A natural disaster, a chemical attack or accidental release, or a nuclear attack or accident; and

(B) Poses a high probability of any of the following harms:

(i) A large number of deaths in the affected population;

(ii) A large number of serious or long-term disabilities in the affected population; or

(iii) Exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

(9) “Public health emergency services and functions” means services and functions provided in response to an event or occurrence of a public health emergency.

(10) “Public health importance” means effecting, affecting or concerning and adversely affecting the health of the public.

(11) “Response” means the department’s reaction and reply to attempt to address, ameliorate, lessen, and protect the public upon the event or occurrence of a public health emergency.

(12) “Response plan” means the strategy and design of the department to address, ameliorate, lessen, and protect the public upon the event or occurrence of a public health emergency.

(13) “Threat”, “threaten”, “threatening”, “threatened” means the existence of a potential or imminent danger, harm, risk or damage.

(14) “Threat to public health” means an event or occurrence of such significance, as determined by the director, that the general health or well-being of the people of the Territory is threatened.

History: 2007, PL 30-11.

13.0304 Mission statement.

(a) It is the policy of American Samoa that in the event or occurrence of a public health emergency, that the public health be protected and promoted to the greatest extent possible through the public health system while respecting individual rights to dignity, health information privacy, nondiscrimination, due process, and other legally-protected interests.

(b) The mission of the department, in regard to this act, is to provide leadership, and to protect and promote the public’s health in any public health emergency by:

(1) Developing a response plan to respond to an event or occurrence of a public health emergency;

(2) Providing or assuring the provision of public health emergency services and functions that are culturally and linguistically appropriate for the Territory;

(3) Encouraging collaboration among public and private sector partners to support the purpose of this act; and

(4) Seeking adequate funding and other sources to provide essential emergency public health services and functions, or accomplish public health goals through public or private sources. This act shall not be construed to require an individual or agency within the public health system to provide specific health services, or to mandate the Territory’s and local public health agencies to implement unfunded programs.

History: 2007, PL 30-11.

13.0305 Director and department powers.

To carry out the purpose of this act, the director and the department are authorized, in addition to exercising any and all powers provided under the American Samoa Public Health Act, to provide or implement upon the declaration of a public health emergency, a response to an event or occurrence of a public health emergency, including services or functions to:

(a) Utilize a broad range of flexible powers to protect and promote the public’s health during an event or occurrence of a public health emergency including compulsory powers as defined in the act;

(b) Conduct, fund, provide, or endorse response standards for the events or occurrences of public health emergencies;

(c) Develop and provide certification, credentialing, or effective training for members of the department, ASG agencies, public and private sector partners and volunteers;

(d) Develop, adopt, and implement public health emergency plans through administrative regulations, formal policies, or collaborative recommendations that guide or support individual and community response efforts;

(e) Establish formal or informal relationships with federal agencies, ASG agencies, public or private sector partners, volunteers, and any other person or entity within and without the Territory, to support and aid in the response to an event or occurrence of a public health emergency;

(f) Enforce existing laws and administrative regulations (including emergency regulations), and propose new laws, amendments to existing laws or administrative regulations that may serve as tools to protect the public's health;

(g) Identify, assess, prevent, and ameliorate conditions of public health emergencies through mandatory reporting observations, epidemiological tracking, program evaluation and monitoring; testing and screening programs, treatment, abatement of public health nuisances, administrative inspections, or other techniques;

(h) Promote or ensure the availability and accessibility of resources to respond to an event or occurrence of a public health emergency;

(i) Systematically and regularly review and recommend modifications to the response plan and other systems needed or developed to protect the public's health during or after an event or occurrence of a public health emergency;

(j) Request warrants for law enforcement assistance required for the operation or enforcement of any provision of this act;

(k) Request assistance from the American Samoa Government Attorney General, law enforcement officials, or any other American Samoa Government official in the operation or enforcement of any provision of this act.

History: 2007, PL 30-11.

13.0306 Response and control of event or occurrence of a public health emergency.

(a) The director and department are authorized to use the powers and provisions set forth in this act to respond to, control, or ameliorate conditions arising from events or occurrences of public health emergencies in addition to any and all powers and authority provided to the director and department under any other law or regulation of the Territory.

(b) In carrying out these authorities or powers, the department and director are guided by the following principles:

(1) The exercise of any authority or power under this act shall be to further or support improving, controlling, correcting, or responding to protect the public's health during or after any event or occurrence of a public health emergency.

(2) Whenever possible, the department and director shall exercise its authorities or powers through procedures, practices, or programs that are based on modern, scientifically-sound principles and evidence.

(3) The department and director shall strive to design and implement procedures in the response plans that are well-targeted to accomplishing essential public health emergency services and functions. The department and director should employ compulsory powers

only to avert a significant risk and should avoid using compulsory power in a manner that is over-broad (applying to more individuals than is necessary for an effective response).

(4) The department and director should employ the least restrictive alternative in the exercise of its authorities or powers, especially compulsory powers. This means that where the agency may exercise one or more of its authorities or powers to respond to a public health emergency, the department and director shall, to the extent possible, employ the policy or practice that least infringes on the rights or interests of individuals. Employing the least restrictive alternative does not require the department or the director to adopt policies or programs that are less effective in protecting the public's health or safety.

(5) The department and director shall not discriminate in an unlawful manner against individuals on the basis of their race, creed, color, ethnicity, nationality, religious beliefs, sex, sexual orientation, age or disability status.

(6) The department and director shall respect the dignity of each individual under their jurisdiction, regardless of the individual's nationality, citizenship, or residency status.

History: 2007, PL 30-11.

13.0307 Declaring a public health emergency.

(a) A public health emergency may be declared by the Governor, at the director's recommendation, upon the event or occurrence of a public health emergency, or the imminent threat of a public health emergency. Prior to such a declaration, the Governor and/or Director, may consult with the Territorial Office of Homeland Security, ASG agencies, federal agencies and may consult with any additional public health or other experts as needed.

(b) A public health emergency shall be declared in a written statement that specifies:

(1) The nature of the public health emergency or the imminent threat of a public health emergency;

(2) The geographic area(s) subject to the declaration;

(3) The conditions that have brought about the public health emergency or imminent threat of a public health emergency; and

(4) The duration of the public health emergency, if less than thirty (30) days.

(c) The declaration of a public health emergency shall activate the response of the department. Such declaration authorizes the deployment and use of any forces that the response requires and the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or available for the response.

(d) The Governor may terminate the state of public health emergency any time after the date of original declaration upon finding that the circumstances or conditions that caused the emergency no longer exist. In the event that the Governor terminates any public health emergency declared, neither the director nor the department shall be liable for the death of, or any injury to individuals, or damage to property, as a result of the director or department's inability to exercise necessary emergency authority or powers granted by the act.

History: 2007, PL 30-11.

13.0308 Roles and responsibilities.

The department must perform public emergency health services and functions. The department may actively collaborate with federal agencies, ASG agencies, public and private sector partners, volunteers, and any other person or entity within or without the Territory to improve these services and functions.

History: 2007, PL 30-11.

13.0309 Individual rights.

All persons within the department shall seek to accomplish the purposes and mission of this act while respecting individual rights including:

- (1) Respect for the dignity of each individual;
- (2) Protection of health information privacy for each individual consistent with the purpose of this act and any other applicable federal or Territory laws;
- (3) Provision of adequate due process as required by this act or other applicable federal or Territory laws; and
- (4) Avoidance of explicit or implicit discrimination in an unlawful manner of individuals on the basis of their race, ethnicity, nationality, religious beliefs, sex, sexual orientation, or disability status.
- (5) The director shall adopt regulations addressing and governing the protection of individuals during the department's response to any event or occurrence of a public health emergency.

History: 2007, PL 30-11.

13.0310 Response plan.

A response plan is needed to achieve the purpose of this act and provide public health emergency services and functions.

(a) The director shall develop a public health emergency plan and deliver a copy of the plan to the Governor. The response plan should address the following goals:

- (1) Identify and determine the existence of, potential, threat of, or imminent danger of an event or occurrence of a public health emergency;
- (2) Develop and/or support an information infrastructure aiding and supporting a full and adequate response to events or occurrences of public health emergencies;
- (3) Develop and provide for certification, credentialing, or effective training for members of the department, ASG agencies, and public and private sector partners and volunteers involved in a response;
- (4) Provide for participation in voluntary advanced registration and accreditation programs; and
- (5) Comprehensively plan and set priorities for the performance of essential public health emergency services and functions.

(b) To fulfill these and other goals underlying the development of an infrastructure to respond to public health emergencies, the department shall consult, adopt and implement federal and Territory guidelines, initiatives, programs, and recommendations relating to improvements in public health infrastructure provided they are consistent with accomplishing the purpose of this act and respecting the unique territorial circumstances and resources.

(c) The director shall promulgate rules and regulations specifying the scope and content of the response plan and ensure that the plan is regularly tested and revised as needed.

(d) Each response plan shall be reviewed and updated annually, if needed.

(e) The director shall provide a copy of the response plan to the Governor and the Fono, and shall make available a copy to appropriate federal agencies, ASG agencies, public and private sector partners and volunteers.

History: 2007, PL 30-11.

13.0311 Department training, certification and credentialing.

(a) The director and department may identify and encourage public and private leaders in the Territory to work through the department to develop, administer, and fulfill the requirements of this act, and ensure the provision of public health emergency services and functions.

(b) The director may adopt and administer training certification or credentialing programs for department personnel, ASG agencies, public and private sector partners and volunteers. These programs should be designed to develop knowledge, skills, and abilities in relevant and contemporary areas addressing the response and may be based on:

(1) Basic, core, or technical competencies (and corresponding curriculum) for emergency preparedness and response; or

(2) Professional codes for public health professionals.

History: 2007, PL 30-11.

13.0312 Department agreements.

(a) The department may seek to establish working relationships and agreements with federal agencies, ASG agencies, public and private sector partners and volunteers, to coordinate, assist or engaged in the providing of a response to a public health emergency.

(b) The director may form one or more agreements with any other United States Pacific territories or their agencies to coordinate the provision of a response to a public health emergency.

History: 2007, PL 30-11.

13.0313 Data collection.

(a) The department is authorized to collect, analyze, and maintain databases of identifiable or non-identifiable information related to:

(1) Risk factors identified for specific conditions of public health emergencies;

(2) Morbidity and mortality rates for events or occurrences of public health emergencies;

(3) Community indicators relevant to conditions of public health emergencies; and

(4) Any other data needed to accomplish or further the mission or goals of the Department and of this act.

(b) The department is authorized to obtain information from federal agencies, ASG agencies, health care providers, public and private sector partners, volunteers, and private and public organizations related to or involving potential, possible or actual public health emergencies.

(1) The department may use information available from other governmental and private sources, reports of hospital discharge data, information included in death certificates, other vital statistics, environmental data, and public information.

(2) The department may request information from or inspect health care records maintained by other ASG agencies that identify patients or characteristics of patients with reportable diseases or other conditions of public health emergencies.

History: 2007, PL 30-11.

13.0314 Reporting to detect and track a public health emergency.

A health care provider, hospital, coroner, medical examiner, and veterinarian shall report to the department all cases of individuals or animals who harbor, or are suspected of harboring, any condition of possible public health importance that may be potential causes or indicators of a public health emergency.

History: 2007, PL 30-11.

13.0315 Epidemiologic investigation.

The department may investigate conditions of public health emergencies through:

(1) Methods of epidemiological investigation including identifying individuals who have been or may have been exposed to, affected by or infected by an event or occurrence of a public health emergency; and

(2) Interviewing and testing those individuals, and examining facilities or materials that may pose a threat to the public's health as the result of an occurrence of a public health emergency.

History: 2007, PL 30-11.

13.0316 Testing, examination and screening.

The department may administer testing, examination, and screening procedures or programs to identify conditions of actual, possible and imminent public health emergencies.

History: 2007, PL 30-11.

13.0317 Vaccinations.

The director or department may require vaccination of any individual within their jurisdictions to prevent the introduction or spread of an infectious disease or other threat to public health during a declared public health emergency.

History: 2007, PL 30-11.

13.0318 Collection of laboratory specimens--performance of tests.

During a declared public health emergency, the department may collect, or cause to be collected, specimens or environmental samples and perform tests on living and deceased individuals, environmental samples, and any animal (living or deceased), and acquire any previously collected specimens, samples, or test results that are reasonable and necessary to respond to the public health emergency.

History: 2007, PL 30-11.

13.0319 Additional emergency powers.

During a declared public health emergency, the director and department are authorized:

(1) To close, direct, and compel the evacuation of, or decontaminate or cause to be decontaminated any facility of which it has reasonable cause to believe that it may have been exposed to, subjected to, or the cause of a public health emergency.

(2) To require any local hospital or any health care facility to provide services or the use of its facility if such services or use are reasonable and necessary to respond to an event or occurrence of a public health emergency.

(3) To decontaminate or cause to be decontaminated, or destroy, any material of which it has reasonable cause to believe that it may have been exposed to, subjected to, or the cause of a public health emergency.

(4) To inspect, control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of food, fuel, clothing and other commodities if, and only if, such items have been exposed to, subjected to, or the cause of a public health emergency, and the item poses a threat to public health.

(5) During an event or occurrence of a public health emergency, the department is authorized to control or limit ingress and egress to and from any stricken or threatened public area, the movement of individuals within the area, and the occupancy of premises therein, if such action is reasonable and necessary to respond to an event or occurrence of a public health emergency.

History: 2007, PL 30-11.

13.0320 Procurement.

(a) During a declared public health emergency, ASG procurement is authorized to make emergency procurement of any and all items, services and products of any nature as requested by the director, or his designee, to be used to respond to the public health emergency.

(b) All other expenditures or contracts entered into pursuant to the Act, if involving the expenditure or potential expenditure of funds, shall be in accordance with the applicable laws and regulations under ASG procurement.

History: 2007, PL 30-11.

13.0321 Property--Civil proceedings.

To the extent practicable and consistent with the appropriate response to an event or occurrence of a public health emergency, prior to the destruction of any property under this act, the department shall institute appropriate civil proceedings concerning the property to be destroyed in accordance with the Territory laws and rules of Court. Any property acquired by the agency through such proceedings shall, after entry of the decree, be disposed of by destruction as the Court may direct.

History: 2007, PL 30-11.

13.0322 Private liability.

(a) During a declared public health emergency, any non-governmental person and employees and agents of such person under the direction of the director or his duly appointed agent, or who renders assistance or advice at the request of the director or his duly appointed agent shall not be civilly liable for causing the death of, or injury to, any individual or damage to any property except in the event of gross negligence or willful misconduct.

(b) The immunities provided in this section shall not apply to any person whose act or omission caused in whole or part the event or occurrence of a public health emergency and who would otherwise be liable for the public health emergency.

History: 2007, PL 30-11.

13.0323 Criminal penalties.

(a) Any person who willfully violates or obstructs the execution of any of this act's provisions, regulation, or rule, or fails to follow any Court order under this act, for which no other penalty is prescribed, shall be guilty of a class A misdemeanor.

(b) Any action under this section is barred unless the action is commenced within two years after the cause of action accrues.

(c) Each violation of this act is a separate and actionable offense.

History: 2007, PL 30-11.

13.0324 Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstances is held invalid in a federal or Territory court, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

History: 2007, PL 30-11.

13.0325 Conflicting laws.

(a) This act does not restrict any person from complying with federal law or regulations.

(b) In the event of a conflict between this act and other Territory laws or regulations, the provisions of this act and its regulations shall apply.

History: 2007, PL 30-11.

13.0326 Adoption, amendment and revisions of regulations.

(a) The director shall adopt regulations, policies or procedures addressing and governing the response, notification and explanation to the public, coordination, identification, enforcement and termination of a declaration of a public health emergency and all acts or actions needed to appropriately and adequately respond to an event or occurrence of a public health emergency.

(b) These regulations, policies and procedures shall take into account and provide for the following:

(1) Needs for the protection of the public's health during a public health emergency.

(2) Needs, if any, for protecting, treating or quarantining personnel or other persons exposed to biological pathogens or agents, including work associated with a response to an event or occurrence of a public health emergency.

(3) Needs for securing laboratories or other facilities to be used in a response to an event or occurrence of a public health emergency.

(4) Needs for tracking of inoculations or other treatments administered to individuals in the Territory during a public health emergency.

(5) Needs to provide training programs for the department, ASG agencies, public and private sector partners and volunteers for response to a public health emergency.

(c) The director may amend or revise such regulations from time to time. All regulations adopted and any and all amendments or revisions to the regulations shall be made in accordance with 4.1001 et seq., A.S.C.A.

History: 2007, PL 30-11.

13.0327 Temporary regulations, rules and procedures during a declared public health emergency.

(a) During any declared public health emergency, the director may enact one or more temporary regulations, rules or procedures as needed in the discretion of the director.

(b) Any such temporary regulations, rules or procedures shall automatically terminate thirty days after the termination of the declared public health emergency.

History: 2007, PL 30-11.

Chapter 04

CANCER REGISTRY

Sections:

13.0401 Establishment.

13.0402 Cancer registry data and confidentiality.

13.0403 Promulgation of rules.

13.0404 Interstate Sharing of Information—Confidentiality.

13.0401 Establishment.

A population-based cancer registry is hereby established. The Department of Health shall administer and maintain the cancer registry established under this section.

History: 1998, PL 25-22; amd 2010, PL 31-15 § 1.

13.0402 Cancer registry data and confidentiality.

The Department of Health shall collect, for each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), data concerning:

(1) demographic information about each case of cancer;

(2) information on the industrial or occupational history of the individuals with the cancers, to the extent such information is available from the same record;

- (3) administrative information, including date of diagnosis and source of information;
- (4) pathological data characterizing the cancer, including the cancer site, stage of disease, incidence, and type treatment; and
- (5) other elements determined by the Department of Health.

All data collected under this section shall be considered confidential as to the names of persons or physicians concerned, except that researchers may use the names of such persons when requesting additional information for research studies when such studies have been approved by the Director of Health.

History: 1998, PL 25-22.

13.0403 Promulgation of rules.

The Department of Health shall develop rules necessary to:

- (1) ensure complete reporting by hospitals, laboratories, physicians and other health care practitioners diagnosing, or providing treatment for cancer patients;
- (2) ensure access to all records that would identify cases of cancer or establish characteristics of the cancer, treatment of the cancer, or medical status of the individual patient;
- (3) protect the confidentiality of all cancer data reported to the registry;
- (4) establish the format, quality requirements, completeness, and timeliness of required data;
- (5) and protect individuals complying with the law including provisions specifying that no person shall be held liable in any civil action with respect to a cancer case report provided to the cancer registry."

History: 1998, PL 25-22.

13.0404 Interstate Sharing of Information-Confidentiality.

(a) In order to obtain complete information on American Samoa patients who have been diagnosed or treated in other territories and states and in order to provide information to other states, territories, cancer registries, federal cancer control agencies, and health researchers regarding their residents who have been diagnosed or treated for cancer in American Samoa, the director of health or the director's authorized representative is hereby authorized to enter into appropriate written agreements with other states, territories, cancer registries, federal cancer control agencies, and health researchers for the purpose of determining the sources of cancer and evaluating measures designed to eliminate, alleviate, or ameliorate their effect.

(b) Each state or territory with which the director of health agrees to exchange such information must agree in writing to keep all patient-specific information confidential and to require any research personnel to whom the information is made available to keep it confidential.

History: 2010, PL 31-15 § 2.

Chapter 05

VITAL STATISTICS

Sections:

- 13.0501 Birth and death certificate.**
- 13.0510 Definitions.**
- 13.0511 Reporting of births and deaths.**
- 13.0512 Fathers of illegitimates-Entry of name on records.**
- 13.0513 Delayed registration of birth-Application-Form and contents.**
- 13.0514 Delayed registration of birth-Supporting evidence.**
- 13.0515 Delayed registration of birth-Review of application.**
- 13.0516 Delayed certificate of birth-Evidence in judicial proceedings.**
- 13.0517 Identification cards.**
- 13.0520 Procedure upon discovery of dead body-Report required.**
- 13.0521 Making of required report relieves others of duty to report.**
- 13.0522 Autopsies.**
- 13.0523 Burial permits.**
- 13.0430 Amendment of incorrect birth, death, or marriage record.**
- 13.0540 Violation—Penalty.**

13.0501 Birth and death certificates.

(a) Certificates of birth and death shall be completed by the Department of Medical Services of the Government of American Samoa and forwarded to the Registrar of Vital Statistics as soon as possible, but in no event more than 6 months after birth, (b) The Registrar shall charge a fee for issuing a certified copy of a certificate of birth or death pursuant to 43.0102.

History:1962, PL 7-12; 1968, PL 10-55.

13.0510 Definitions.

As used in this chapter:

(a) “Affidavit” means a written statement executed under oath by a person who at the time of birth was of sufficient age to have knowledge of the facts of birth and shall include the full name of the person whose birth is sought to be registered, the names of his parents, the date and place of his birth, and the basis of the affiant’s knowledge of these facts.

(b) “Documentary evidence” means an original or certified copy of a record which was executed at least 5 years prior to the date of application and which substantiates the date and place of birth of the person whose birth is sought to be registered; except that if the person whose birth is sought to be registered is under 12 years of age, the record need only have been executed at least 2 years before the date of application. Examples of documentary evidence which are generally considered acceptable are hospital records of birth, baptismal certificates or other church records, school and census records, statements in applications for insurance policies, military service records, voting registration records, family Bible records, the birth certificate of a child of the person whose birth is being registered, certificates of registry of marriage, and newspaper notices of birth.

History:1968, PL 10-55.

13.0511 Reporting of births and deaths.

(a) The birth of every child shall be reported promptly to the pulenuu of the village where the child was born, together with such further particulars as the pulenuu may

request. Within 30 days from the date of birth, the child shall be footprinted on a birth certificate provided by the Department of Health. The report of birth shall be made by the father or mother, or in the event of the death, absence or inability of the father or mother, by the owner of the house or place where the child was born.

(b) The death of every person shall be reported promptly to the pulenuu of the village where the death occurred, together with such further particulars as the pulenuu may request. The report of death shall be made by the occupant of the house or place where the death occurred, or by the relatives of the deceased.

(c) The pulenuu shall report all births and deaths, with such particulars as may be required, within 10 days following the birth or death, to the department of medical services. These reports shall be forwarded promptly to the Registrar of Vital Statistics, together with such comment as is pertinent.

(d) Births and deaths occurring at the LBJ Medical Center need not be reported to the pulenuu, but shall be reported by the Director of Health. Each child born at the center shall be footprinted on a birth certificate provided by the department.

History:1962, PL 7-12; amd 1979, PL 16-25 § 1.

Amendments: 1979 subsections (a), (d): added provisions relating to footprinting.

13.0512 Fathers of illegitimates—Entry of name on records.

The father of an illegitimate child is not required to give information under this chapter regarding the birth of the child, and the father's name may not be entered on the records unless requested in writing by both the mother and the person acknowledging himself to be the father.

History:1962, PL 7-12.

13.0513 Delayed registration of birth— Application—Form and contents.

(a) An application may be filed with the Registrar of Vital Statistics for the delayed registration of birth of any person born in this territory whose birth is not registered. Such application may be made only by the person whose birth is sought to be registered if he is 18 years of age or over at the time of filing the application. If the person whose birth is sought to be registered is under 18 years of age at the time of filing the application, the application may be made only by his mother, father, guardian, or matai.

(b) The application shall be made on the forms prescribed and furnished by the Registrar of Vital Statistics and shall contain such information and be accompanied by such affidavits and documentary evidence as required to enable the Registrar to determine whether such birth did in fact occur at the place and date alleged. The application and the birth certificate, if issued, shall contain the fingerprints of the applicant if the applicant is over 18 years of age, signed photographs of a size and type substantially similar to that required for U.S. passports shall be attached. One shall remain with the application and one shall be attached to the birth certificate so as to aid in identification of bearer.

History:1968, 10-55; amd 1979, PL 16-25 § 1.

Amendments: 1979 Subsection (b): added second and third sentences relating to fingerprints and photos.

13.0514 Delayed registration of birth— Supporting evidence.

(a) When a birth is sought to be registered under this chapter and the date of application is less than 7 years following the date of birth, only one affidavit, of either the physician or other attendant at birth, or of the mother or father of the person whose birth is sought to be registered, is required.

(b) When a birth is sought to be registered under this chapter and the date of application is 7 years or more following the date of birth, there shall be required documentary evidence and affidavits as follows:

(1) two pieces of documentary evidence, at least one of which shall support the parentage; or

(2) one piece of documentary evidence and 2 affidavits, one by the physician and one by another attendant at birth; or

(3) one piece of documentary evidence and 2 affidavits executed by either the mother, father or another person having knowledge of the birth.

(c) The Registrar of Vital Statistics may dispense with the production of documentary evidence where he determines that it is unlikely that any exists.

History:1968, PL 10-55.

13.0515 Delayed registration of birth— Review of application.

(a) Upon receipt by the Registrar of Vital Statistics of an application for delayed registration of birth, and payment of a reasonable fee to be set by the Registrar, the Registrar shall review the application, together with the affidavits and accompanying documentary evidence, and may accept the application if they comply with the provisions of this chapter.

(b) After acceptance by the Registrar, the application shall constitute a delayed certificate of birth, and the Registrar shall permanently preserve it.

(c) The Registrar shall maintain an index of all such certificates.

History:1968, PL 10-55.

13.0516 Delayed certificate of birth—Evidence in judicial proceedings.

Delayed certificates of birth issued pursuant to this chapter shall not be considered as evidence in any action or proceeding involving estates or decedents or in any proceeding to establish heirship unless the affidavit of at least one person who knew the facts was filed at the time of the obtaining of the certificate.

History:1968, PL 10-55.

13.0517 Identification cards.

(a) The Registrar of Vital Statistics is authorized and directed to prepare application forms necessary to issue an identification card to any American Samoan who requests one. The forms shall contain information required by the Registrar and be accompanied by such affidavits and documentary evidence necessary to enable the Registrar to ascertain the accuracy of the information. At a minimum the forms shall contain inquiries with respect to:

(1) the date and place of birth;

(2) the name of the father and mother if known;

(3) the sex of the applicant; and

(4) such additional matters as may be prescribed.

(b) The information on the application and photographs made under the provisions of this section shall be confidential, and shall be made available only to the applicant. If the applicant is under the age of 18 years of age the application shall be executed by one of the parents or legal guardian of the applicant.

(c) The Registrar of Vital Statistics shall set annually a fee for this service which fee shall cover all costs involved in producing the forms and identification cards.

History: 1990, PL 21-42.

13.0520 Procedure upon discovery of dead body—Report required.

(a) In case any dead body is found, and in case of any accidental death or death allegedly caused by unlawful means, the pulenuu shall report it without delay to the Attorney General for investigation. If such is not possible, the report shall be made to the local representative of the Department of Health, who is authorized to act as coroner to investigate and report his findings to the Attorney General.

(b) The body shall not be removed until the arrival of the Attorney General or investigating officer unless necessary to prevent probable loss or mutilation of the body.

(c) No burial may take place until approved by the Attorney General.

History:1962, PL 7-12.

13.0521 Making of required report relieves others of duty to report.

A report required by this chapter, when made by one of several persons responsible for making it, shall relieve the others of the duty to report.

History: 1968, PL 10-55.

13.0522 Autopsies.

(a) When any person dies, and the cause of death cannot otherwise be satisfactorily ascertained, an autopsy of the body to discover the cause of death may be performed if the Attorney General certifies in writing that the autopsy is necessary for the detection of possible crime, or if the Director of Health certifies in writing that the autopsy is necessary for public health purposes. The autopsy may be performed by a duly licensed physician or Samoan medical officer.

(b) It is unlawful for any person to obstruct or interfere with an autopsy authorized under this section.

History:1962, PL 7-12.

13.0523 Burial permits.

(a) The body of a deceased Samoan shall not be buried until a burial permit has been issued by the county chief or his authorized representative.

(b) The body of a deceased non-Samoan shall not be buried until a burial permit has been issued by the Attorney General.

History:1962, PL 7-12.

13.0530 Amendment of incorrect birth, death, or marriage record.

(a) Whenever the facts are not correctly stated in any certificate of birth, death, or

marriage already registered, the person asserting the error may make an affidavit under oath stating the changes necessary to make the record correct, supported by the affidavit of one other person having knowledge of the facts, and file it with the Registrar.

(b) The Registrar of Vital Statistics shall review the affidavits and documents and may require further supporting evidence when he believes that it is necessary. If the Registrar is satisfied that the correction is properly supported, he shall accept the amendment.

(c) When the amendment is accepted, it shall be filed with and become a part of the pertinent record, but the original record shall not be altered. Certified copies of certificates may be made showing the correct information, but must show that it is an amended birth certificate.

History: 1968, PL 10-55.

13.0540 Violation-Penalty.

Any person who violates a provision of this chapter shall be guilty of a class B misdemeanor and upon conviction, sentenced accordingly.

History: 1968, PL 10-55; amd 1980, PL 16-90 § 54.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

Chapter 06

MEDICAL TREATMENT

Sections:

13.0601 Definitions.

13.0602 Persons entitled to free medical attention--Limitations--Extent.

13.0603 Fees—Deposit of money.

13.0601 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

(1) "American Samoa" is defined by 41.0202 (1)(c).

(2) "Medical attention", means direct patient care provided by a medical doctor, medical officer, osteopath, dentist, or dental officer, including drugs and medicines prescribed as part of that care.

(3) "Use of Medical Center facilities", means all services and operations of Medical Center facilities, other than medical attention."

History: 1998, PL 25-20.

Case Notes:

Territorial statute which required the government to provide free medical services to all citizens, and which did not require citizens who had ability to pay their own medical expenses to reimburse the government, implicitly required that government's claim for reimbursement from tortfeasor's insurer should be subordinate to victim's claim for pain and suffering. A.S.C.A. § 13.0601. American International Underwriters v. American Samoa Government, 3 A.S.R.2d 115 (1986).

ASG provides free medical attention to American Samoans and qualified residents, but it can, under the equitable principle of subrogation, look to the tortfeasor for reimbursement. A.S.C.A. § 13.0601. *Puailoa v. Barber*, 19 A.S.R.2d 48 (1991).

13.0602 Persons entitled to free medical attention—Limitations--Extent.

(a) Medical attention shall be provided free of charge by the government to the following persons:

(1) all American Samoans, including those who are not American Samoans but are married to an American Samoans, and their children if they are residing in American Samoa at the time the time medical attention is rendered;

(2) non-American Samoans who have legally resided in American Samoa for at least 10 years prior to the time medical attention is rendered;

(3) civil service employees of the United States of America assigned to duty in American Samoa and persons who are exempt from payment of medical charges by virtue of contracts with the government and spouses and children of such persons.

(b) Free medical attention is limited to persons presenting themselves at Department of Health clinics, health centers, or Medical Center facilities and does not include house visits or consultation at other places unless made at the convenience of the physician, but nothing contained in this section may be construed as limiting the right of the Department of Health, or the Medical Center to make a reasonable charge for the use of their respective facilities.

(c) Dental attention shall be rendered in the same manner and under the same conditions as medical attention.

History:1962, PL 7-12; 1968, PL 10-36;amd 1972, PL 12-43; amd 1998, PL 25-20.

Case Notes:

Insured's claim for damages against insurer takes priority over government's claim against same insurer for reimbursement for paying medical expenses of insured when government's claim, if paid, would deprive insured of recovery to which he is entitled. *American International Underwriters v. A.S.G.*, 3 A.S.R.2d 115 (1986).

Territorial statute which required the government to provide free medical services to all citizens, and which did not require citizens who had ability to pay their own medical expenses to reimburse the government, implicitly required that government's claim for reimbursement from tortfeasor's insurer should be subordinate to victim's claim for pain and suffering. A.S.C.A. § 13.0601. *American International Underwriters v. American Samoa Government*, 3 A.S.R.2d 115 (1986).

ASG provides free medical attention to American Samoans and qualified residents, but it can, under the equitable principle of subrogation, look to the tortfeasor for reimbursement. A.S.C.A. § 13.0601. *Puailoa v. Barber*, 19 A.S.R.2d 48 (1991).

13.0603 Fees--Deposit of money.

(a) Professional and other service and administrative charges shall be made by the Department of Health (including Samoan medical and dental officers) and the Medical Center to persons not provided for in 13.0601. Such charges shall be reviewed annually pursuant to law.

(b) Charges of an amount to be fixed annually by the Medical Center shall be made for patients admitted to Medical Center.

(c) All money received as a result of Medical Center charges made under this section shall be deposited in the Medical Center accounts established under 13.0109 of this title.

History:1962, PL 7-12; 1969, PL 11-47;amd 1972, PL 12-43; amd 1998, PL 25-20.

STATE MEDICAID PROGRAM

Sections:

13.0701 Establishment--Department of Health designated state agency.

13.0702 Designation of State Medicaid Director.

13.0703 Mandatory reporting.

13.0701 Establishment--Department of Health designated state agency.

The Department of Health is hereby designated as the state agency for the medicaid program in American Samoa. The Department shall develop administer and amend as necessary the medicaid state plan, prepare and submit the annual presumed eligible report, and ensure that the medicaid program in the Territory is carried out consistent with U.S. law and regulations administration, Department of Health and Human Services.

History: 1998, PL 25-22.

13.0702 Designation of state medicaid director.

The Director of Health shall designate an individual in the Department of Health as State Medicaid Director to administer the medicaid program.

History: 1998, PL 25-22.

13.0703 Mandatory reporting.

The modified annual medicare/medicaid cost report and other financial reports required by the medicaid state plan will remain the responsibility of the Medical Center.

History: 1998, PL 25-22.

CHAPTER 08

HEALTH CARE DECISIONS

Part I—Health Care Representatives

Sections:

13.0801 Appointment of a Health Care Representative.

13.0802 Capacity of principal.

13.0803 Responsibility of the representative.

Part II—Health Care Advanced Directives

Sections:

13.0804 Procedure for making a living will.

13.0805 Procedure for living will.

13.0806 Procedure in absence of living will.

13.0807 Determination of patient condition.

13.0808 Mercy killing or euthanasia not authorized—Suicide distinguished.

Part I—Health Care Representatives

13.0801 Appointment of a health care representative.

(a) A written document appointing a representative to make health care decisions for a principal shall be signed by the principal in the presence of two subscribing witnesses. A principal unable to sign the instrument may, in the presence of witnesses, direct that another person not a witness to the instrument sign the principal's name as required herein. An exact copy of the instrument shall be provided to the representative.

(b) The person appointed as representative shall not act as witness to the execution of the instrument appointing the health care representative. Both witnesses must be at least 18 years of age, and at least one person who acts as a witness shall be neither the principal's spouse nor relative by blood or adoption.

(c) An instrument appointing a health care representative may also appoint an alternate representative provided the appointment is explicit. The alternate representative may assume his or her duties as representative for the principal if the original representative is unwilling or unable to perform his or her duties. The principal's failure to appoint an alternate representative shall not invalidate the appointment of the original representative.

(d) Unless the instrument states a time of termination, the appointment shall remain in effect until revoked by the principal.

(e) A written appointment of a health care representative executed pursuant to this section establishes a rebuttable presumption of clear and convincing evidence of the principal's appointment of the representative.

History: 2008, PL 30-33.

13.0802 Capacity of principal.

(a) A principal is presumed to be capable of making health care decisions for himself or herself unless she/he is determined to be incapacitated. Incapacity may not be inferred from the person's voluntary or involuntary hospitalization for mental illness or from his or her mental retardation.

(b) If a principal's capacity to make health care decisions for himself or herself is in question, the attending physician shall evaluate the principal's capacity and, if the physician concludes that the principal lacks capacity, enter that evaluation in the principal's medical record. If the attending physician has a question as to whether the principal lacks capacity, another physician also shall evaluate the principal's capacity, and if the second physician agrees that the principal lacks the capacity to make health care decisions, the health care facility shall enter both physicians' evaluations in the principal's medical record. If the principal has appointed a health care representative, the facility shall notify such health care representative in writing that his or her authority under the instrument has commenced.

(c) The representative's authority shall commence upon a determination under subsection (b) that the principal lacks capacity, and such authority shall remain in effect until a determination that the principal has regained capacity. Upon commencement of the representative's authority, a representative who is not the principal's spouse shall notify the principal's spouse and adult children of the principal's appointment of the representative. In the event the attending physician determines that the principal has regained capacity, the authority of the representative shall cease, but shall recommence if the principal subsequently loses capacity as determined pursuant to this section.

(d) A determination made pursuant to this section that the principal lacks capacity to make health care decisions shall not be construed as a finding that the principal lacks capacity for any other purpose.

(e) In the event the representative is required to consent to withholding or withdrawing life-prolonging procedures, the provisions of part II shall apply.

History: 2008, PL 30-33.

13.0803 Responsibility of the representative.

(a) The representative, in accordance with the principal's instructions, unless such authority has been limited expressly by the principal, shall:

(1) Have the authority to act for the principal and to make all health care decisions for the principal during the principal's incapacity;

(2) Consult expeditiously with appropriate health care providers to provide informed consent, and make only health care decisions for the principal which she/he believes the principal would have made under the circumstances if the principal were capable of making such decisions. If there is no indication of what the principal would have chosen, the representative may consider the principal's best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn;

(3) Provide written consent using an appropriate form whenever consent is required, including a physician's order not to resuscitate;

(4) Be provided access to the appropriate medical records of the principal;

(5) Apply for public benefits, such as Medicare and Medicaid, for the principal and have access to information regarding the principal's income and assets, and banking and financial records, to the extent required to complete the application.

(b) The representative may authorize the release of information and medical records to appropriate persons to ensure the continuity of the principal's health care and may authorize the admission, discharge or transfer of the principal to or from a health care facility or other facility or program licensed to provide long-term, tertiary or hospice care.

(c) If, after the appointment of a representative, a court appoints a guardian, the representative shall continue to make health care decisions for the principal, unless the court has modified or revoked the authority of the representative pursuant to this section. The representative may be directed by the court to report the principal's health care status to the guardian.

(d) In the event a guardian is appointed for a principal who has executed an instrument appointing a health care representative, the court appointing the guardian shall specify in its order of guardianship what authority, if any, the guardian shall exercise over the representative. The court may, with notice to the representative and any other appropriate parties, modify or revoke the authority of the representative to make health care decisions for the ward, if the court finds the representative unfit to exercise the appointed duties.

History: 2008, PL 30-33.

Part II—Health Care Advanced Directives

13.0804 Procedure for making a living will.

(a) Any competent adult may, at any time, make a living will or written declaration and direct the providing, withholding, or withdrawal of life-prolonging procedures in the event that such person has a terminal condition, has an end-stage condition, or is in a persistent vegetative state. A living will must be signed by the principal in the presence of two subscribing witnesses, one of whom being neither a spouse nor relative by blood or adoption of the principal. If the principal is physically unable to sign the living will, one of the witnesses must subscribe the principal's signature in the principal's presence and at the principal's direction.

(b) It is the responsibility of the principal to provide for notification to his or her attending physician that the living will has been made. In the event the principal is physically or mentally incapacitated at the time the principal is admitted to a health care facility, any other person may notify the physician or health care facility of the existence of the living will. An attending or treating physician or health care facility which is so notified shall promptly make the living will or a copy thereof a part of the principal's medical records.

(c) A living will, executed pursuant to this section, establishes a rebuttable presumption of clear and convincing evidence of the principal's wishes.

History: 2008, PL 30-33.

13.0805 Procedure for living will.

(a) If a person has made a living will expressing his or her desires concerning life-prolonging procedures, but has not appointed a representative pursuant to this part I, the attending physician may proceed as directed by the principal in the living will. In the event of a dispute or disagreement concerning the attending physician's decision to withhold or withdraw life-prolonging procedures, the attending physician shall not withhold or withdraw life-prolonging procedures for 7 calendar days, during which time the party disputing the attending physician's decision may seek review in the High Court. If a review of a disputed decision is not sought within 7 calendar days following the attending physician's decision to withhold or withdraw life-prolonging procedures, the attending physician may proceed in accordance with the principal's instructions.

(b) Before proceeding in accordance with the principal's living will, it must be determined that:

(1) The principal does not have a reasonable medical probability of recovering capacity so that the right could be exercised by the principal;

(2) The principal has a terminal condition, has an end-stage condition, or is in a persistent vegetative state; and

(3) Any limitations or conditions expressed orally or in a written declaration have been considered carefully and have been satisfied.

History: 2008, PL 30-33.

13.0806 Procedure in absence of living will.

(a) In the absence of a living will, the decision to withhold or withdraw life-prolonging procedures from a patient may be made by a health care representative appointed by the principal pursuant to part I unless the instrument limits the representative's authority to consent to the withholding or withdrawal of life-prolonging procedures.

(b) Before exercising the incompetent patient's right to forego treatment, the representative must be satisfied that:

(1) The principal does not have a reasonable medical probability of recovering capacity so that the right could be exercised by the principal; and

(2) The principal has a terminal condition, has an end-stage condition, or is in a persistent vegetative state.

History: 2008, PL 30-33.

13.0807 Determination of patient condition.

In determining whether a patient has a terminal condition, has an end-stage condition, or is in a persistent vegetative state, or may recover capacity, or whether a medical condition or limitation referenced in an advanced directive exists, the patient's attending or treating physician and at least one other consulting physician must separately examine the patient. The findings of each such examination must be documented in the patient's medical records and signed by each examining physician before life-prolonging procedures may be withheld or withdrawn.

History: 2008, PL 30-33.

13.0808 Mercy killing or euthanasia not authorized—Suicide distinguished.

(a) Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(b) The withholding or withdrawal of life-prolonging procedures from a patient in accordance with any provision of this chapter shall not, for any purpose, constitute a suicide.

History: 2008, PL 30-33.

Chapter 09

RESERVED

Chapter 10

MEDICINE AND DRUGS

Sections:

13.1001 Definitions.

13.1002 Authority to control.

13.1003 Confidentiality.

13.1004 Opiates.

13.1005 Opium derivatives.

13.1006 Hallucinogens.

13.1007 Extracted or chemical made substances.

13.1008 Additional opiates.

13.1009 Stimulants.

13.1010 Depressants.

13.1011 Nalorphine.

- 13.1012 Narcotic drugs in limited amounts.**
- 13.1013 Barbiturates.**
- 13.1014 Combinations with nonnarcotics.**
- 13.1020 Prohibited actions.**
- 13.1021 Counterfeiting controlled substance unlawful.**
- 13.1022 Possession of controlled substance unlawful.**
- 13.1023 Subsequent offenses.**
- 13.1024 Deferred proceedings.**
- 13.1030 Powers of authorities.**
- 13.1031 Restraint or injunction of violations.**
- 13.1032 Forfeiture—Substances subject to.**
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- 13.1034 Forfeiture—Contraband.**
- 13.1035 Forfeiture—Seizure of plants providing derivatives.**
- 13.1036 Burden of proof.**
- 13.1037 Liability of officials.**
- 13.1040 Import and sale of drugs and medicines—Permission required.**
- 13.1041 Export of drugs, medicine and medical supplies—Permission required.**
- 13.1042 Violation—Penalty.**

13.1001 Definitions.

As used in this chapter, unless the context otherwise requires:

(a) “Controlled substance” means a drug, substance, or immediate precursor listed in 13.1004 through 13.1014.

(b) “Deliver” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(c) “Director” means the Director of Medical Services.

(d) “Dispense” means to deliver a controlled substance to an ultimate user or research subject, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(e) “Distribute” means to deliver other than by administering or dispensing a controlled substance.

(f) “Drug” means substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; and substances (other than food) intended to affect the structure of any function of the body of man or animals; and substances intended for use as a component of any articles specified in this paragraph. It does not include devices or their components, parts, or accessories.

(g) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

(h) “Marijuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant and every compound,

manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(i) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (i) (1), but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(j) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under sections of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmor-phinan and its salts (dextromenthorphan). It does include its racemic and levorotatory forms.

(k) "Opium poppy" means the plant of the species *Papaversomniferum* L., except its seeds.

(l) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(m) "Produce" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

History: 1974, PL 13-56 § 3.

Case Notes:

Marijuana means all parts of the *Cannabis sativa* L. *ASG v. Tavili a.k.a. Staka*, 1 A.S.R. 2d 72 (1983).

13.1002 Authority to control.

(a) The Director shall administer this chapter and may add substances to or delete substances enumerated in 13.1004 through 13.1014 pursuant to the procedures of the Administrative Procedure Act, 4.1001 et seq. In making a determination regarding a substance, the Director shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychic or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under this chapter.

(b) After considering the factors enumerated in subsection (a), the Director shall make findings with respect thereto and issue a rule controlling the substance if he finds the substance has a potential for abuse.

History: 1974, PL 13-56 § 3.

13.1003 Confidentiality.

Persons engaged in treating a user of controlled substances under authority of the Director may not be compelled to reveal the name of the user where the user has voluntarily applied for help.

History: 1974, PL 13-56 § 3.

13.1004 Opiates.

Controlled substances include any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

Acetylmethadol
Allylprodine
Alphacetylmethadol
Alphameprodine
Alphamethadol
Betacetylmethadol
Betameprodine
Betamethadol
Betaprodine
Clonitazene
Dextromoramide
Dextrorphan
Diampromide
Diethylthiambutene
Dimenoxadol
Dimepheptanol
Dimethylthiambutene
Dioxaphetyl butyrate
Dipipanone
Ethylmethylthiambutene
Etonitazene
Etoxeridine
Furethidine
Hydroxypethidine
Ketobemidone
Levomoramide
Levophenacetylmorphan
Morpheridine
Noracetylmethadol
Norlevorphanol

Normethadone
Norpipanone
Phenadoxone
Phenampramide
Phenomorphane
Phenoperidine
Pintramide
Proheptazine
Properidine
Racemoramide
Senzethidine
Trimeperidine

History: 1974, PL 13-56 § 3.

13.1005 Opium derivatives.

Controlled substances include any of the following opium derivatives, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

Acetorphine
Acetyldihydrocodeine
Benzylmorphine
Codeine methylbromide
Codeine-N-Oxide
Cyprenorphine
Desomorphine
Dihydromorphine
Etorphine
Heroin
Hydromorphanol
Methyldesorphine
Methyldihydromorphine
Morphine methylbromide
Morphine methylsulfonate
Morphine-N-Oxide
Nicocodeine
Nicomorphine
Normorphine
Phocloidine
Thebacon

History: 1974, PL 13-56 § 3

13.1006 Hallucinogens.

Controlled substances include any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

3, 4-methylenedioxy amphetamine

5-methoxy-3, 4-methylenedioxy amphetamine
3, 4, 5-trimethoxy amphetamine
Bufotenine
Diethyltryptamine
Diethyltryptamine
4-methyl-2, 5-dimethoxyl-amphetamine
Ibogaine
Lysergic acid diethylamide
Marijuana
Mescaline
Peyote
N-ethyl-3-piperidyl benzilate
N-methyl-3-piperidyl benzilate
Psilocybin
Tetrahydrocannabinols

History:1974, PL 13-56 § 3.

13.1007 Extracted or chemically made substances.

Controlled substances include any of the following substances, except those narcotic drugs otherwise listed in this chapter, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
- (2) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;
- (3) opium poppy and poppy straw;
- (4) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions which do not contain cocaine or ecgonine.

History:1974, PL 13-56 § 3.

13.1008 Additional opiates.

Controlled substances include any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

Aiphaprodine
Anileridine
Bezitramide
Diphenoxylate
Fentanyl
Isomethadone
Levomethorphan
Levorphanol
Metazocine

Methadone
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane
Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid
Pethidine
Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine
Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate
Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
Phenazecine
Piminodine
Racemethorphan
Racemorphan

History: 1974, PL 13-56 § 3.

13.1009 Stimulants.

Controlled substances include any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) phenmetrazine and its salts;
- (3) any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
- (4) Methylphenidate.

History: 1974, PL 13-56 § 3.

13.1010 Depressants.

Unless listed otherwise in this chapter, controlled substances include any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically otherwise listed in this chapter, or
- (2) Chlorhexadol
Glutethimide
Lysergic acid
Lysergic acid amine
Methyprylon
Phencyclidine
Sulfondiethylmethane
Sulfonethylmethane
Sulfonmethane

History: 1974, PL 13-56 § 3.

13.1011 Nalorphine.

Controlled substances include nalorphine.

History: 1974, PL 13-56 § 3.

13.1012 Narcotic drugs in limited amounts.

Controlled substances include material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

History: 1974, PL 13-56 § 3.

13.1013 Barbiturates.

Controlled substances include any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

Barbital

Chloral betaine

Chloral hydrate

Ethchlorvynol

Ethinamate

Methohexital

Meprobamate

Methylphenobarbital

Paraldehyde

Petrichloral

Phenobarbital

History: 1974, PL 13-56 § 3.

13.1014 Combinations with nonnarcotics.

Controlled substances includes any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (2) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (3) not more than 100 milligrams of ethyl-morphine, or any of its salts, per 100 milliliters or per 100 grams;
- (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

History:1974, PL 13-56 § 3

13.1020 Prohibited actions.

(a) Except as authorized by the Director, it is unlawful for any person to deliver, dispense, distribute, possess with intent to deliver, dispense, or distribute, produce, or manufacture a controlled substance. In determining whether a controlled substance is possessed with intent to deliver, dispense, or distribute, a court should consider, in addition to all other logically relevant factors, the following:

- (1) statements by the owner or by anyone in control of the controlled substance:
- (2) the amount possessed and its consistency or inconsistency with personal use:
- (3) the presence of paraphernalia commonly used in preparing, packaging, or subdividing controlled substances for distribution, dispensing, or delivering; and or
- (4) the presence of apparent proceeds or records of distribution, dispensing, or delivering of controlled substances.

(b) Any person who violates this section is guilty of a crime, and upon conviction may be imprisoned for not more than 20 years, or fined not more than \$20,000, or both.

(c) Any person who violates this section by delivering, dispensing, distributing, producing, manufacturing or who attempts to deliver dispense, distribute, produce, or manufacture a controlled substance in any school or on any school campus in the Territory is guilty of a crime and upon conviction shall be imprisoned for a mandatory term of 10 years without the possibility of parole, and fined \$10,000.00.

History:1974, PL 13-56 § 3; amd 1996, PL 24-20, 1999, PL 26-11.

13.1021 Counterfeiting controlled substance unlawful.

(a) Except as authorized by the Director, it is unlawful for any person to deliver, dispense, distribute, produce, manufacture, or possess with intent to deliver, dispense, distribute, produce, or manufacture a counterfeit of a controlled substance.

(b) Any person who violates this section is guilty of a crime, and upon conviction may be imprisoned for not more than 10 years, or fined not more than \$10,000, or both.

History:1974, PL 13-56 § 3.

13.1022 Possession of controlled substance unlawful.

(a) Except as authorized by the director, it is unlawful for a person to possess a controlled substance.

(b) A person who violates this section is guilty of a felony and shall be punished as follows:

(1) for a first offense, a fine not less than \$5,000 and not more than \$20,000 or not less than 5 years and not more than 10 years in prison, or both;

(2) for a second offense, a fine not less than \$20,000 and not more than \$30,000 or not less than 10 years and not more than 20 years in prison, or both; and

(3) for a third offense, a fine not less than \$30,000 and not more than \$40,000 or not less than 15 years and not more than 30 years in prison, or both;

There shall be no parole for a conviction under this section.

(c) The above penalties are mandatory.

History:1974, PL 13-56 § 3, amd 1984, PL 18-40 § 1; amd 1998, PL 25-34.

Amendments: 1984 Subsection (a): substituted the word “a” for “any”. Subsection (b): upgraded violation from misdemeanor to felony.

13.1023 Subsequent offenses.

(a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) An offense is considered a second or subsequent offense if, prior to his conviction of the offense, the offender has at any time been convicted under this subchapter or under any statute of the United States or of any state relating to narcotic drugs, marijuana, depressant, stimulant or hallucinogenic drugs.

History:1974, PL 13-56 § 3.

13.1024 Deferred proceedings.

History:

Reviser’s Comment: Repealed by PL 25-19.

13.1030 Powers of authorities.

Any employee of the Government of American Samoa who is commissioned or duly authorized to make arrests within the jurisdictional boundaries of his agency, which includes but is not limited to, territorial police, customs inspectors, immigration officers, agriculture inspectors and airport police may:

(1) make arrests without warrant for any offenses under this chapter committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony;

(2) make seizures of property pursuant to this chapter.

History:1974, PL 13-56 § 3.

13.1031 Restraint or injunction of violations.

The High Court may exercise jurisdiction to restrain or enjoin violations of this chapter.

History:1974, PL 13-56 § 3.

13.1032 Forfeiture—Substances subject to.

The following are subject to forfeiture:

(1) all controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this chapter;

(2) all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(3) all property which is used, or intended for use, as a container for property described in paragraph (1) or (2);

(4) all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt, of property described in paragraph (1) or (2); but:

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(B) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without this knowledge or consent;

(c) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

(5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

History:1974, PL 13-56 § 3.

13.1033 Forfeiture--Seizure without process.

(a) Property subject to forfeiture under this chapter may be seized by the Territorial police upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest or a search under a search warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the territory in a criminal injunction or forfeiture proceeding based upon this chapter:

(3) any employee authorized under 13.1030 has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) any employee authorized under 13.1030 has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(b) In the event of seizure pursuant to this section, proceedings under subsection (c) shall be instituted promptly.

(c) Property taken or detained under this section or 13.1032, 13.1034 and 13.1035 is not subject to replevin, but is deemed to be in the custody of the Territorial police subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the Territorial police may:

(1) place the property under seal; or

(2) remove the property to a place designated by it.

- (d) When property is forfeited under this chapter, the territorial police may:
- (1) retain it for official use;
 - (2) sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs.

History: 1974, PL 13-56 § 3.

13.1034 Forfeiture--Contraband.

Controlled substances that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the territory. Controlled substances which are seized or come into the possession of the territory, the owners of which are unknown, are contraband and shall be summarily forfeited to the territory. Controlled substances which are unknown are contraband and shall be summarily forfeited to the Territory.

History: 1974, PL 13-56 § 3.

13.1035 Forfeiture--Seizure of plants providing derivatives.

Species of plants from which controlled substances may be derived, which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growth, may be seized and summarily forfeited to the territory.

History: 1974, PL 13-56 § 3.

13.1036 Burden of proof.

(a) It is not necessary for the territory to negate any exemption or exception in this chapter in any complaint, information, or other pleading, or in any trial, hearing, or other proceeding under this chapter. The burden of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is duly authorized to deliver, dispense, produce, manufacture or possess a controlled substance under this chapter, he is presumed not to be authorized. The burden of proof is upon him to rebut the presumption.

History: 1974, PL 13-56 § 3.

13.1037 Liability of officials.

No liability is imposed by this chapter upon any authorized Territorial officer engaged in the lawful performance of his duties.

History: 1974, PL 13-56 § 3.

13.1040 Import and sale of drugs and medicines--Permission required.

No person may import or sell in American Samoa any medicines or drugs, including patent medicines, unless permission to do so has been granted under regulations approved by the Governor.

History: 1962, PL 7-12.

13.1041 Export of drugs, medicine and medical supplies—Permission required.

No person may export any medicines, drugs or other supplies originally obtained from the Department of Medical Services without the written permission of the Director.

History: 1962, PL 7-12.

13.1042 Violation—Penalty.

Any person who violates any provision of this chapter, or who aids or abets any other person to violate it, shall be guilty of a class D felony and upon conviction, sentenced accordingly.

History: 1972, PL 7-12; amd 1980, PL 16-90 § 53.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

Chapter 11

TOBACCO RESTRICTION ACT

Sections:

- 13.1101 Purpose.**
- 13.1102 Definitions.**
- 13.1103 Identification required.**
- 13.1104 License required.**
- 13.1105 Display of license and sign.**
- 13.1106 Out of package sales prohibited.**
- 13.1107 Fee.**
- 13.1108 Nontransferability.**
- 13.1109 Vending machine.**
- 13.1110 Tobacco samples prohibited.**
- 13.1111 Duties of the Director.**
- 13.1112 Suspension, revocation, and nonrenewable of licenses.**
- 13.1113 Penalties.**
- 13.1114 Tobacco sales hearing board.**
- 13.1115 Severability.**
- 13.1116 Sale of cigarettes without health warnings.**

13.1101 Purpose.

The Legislature of American Samoa finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health consequences. According to recent U.S. studies, every day more than 3,000 minors begin smoking. One-half of smokers begin before the age 18, and 90 percent begin before the age of 21 and minors spend more than one billion dollars on cigarettes and other tobacco products every year.

The Surgeon General of the U.S. Public Health Service has determined that smoking is the leading cause of preventable death in the United States and approximately 390,000 Americans die each year of diseases caused by cigarette smoking. Therefore this act is to implement a strict and enforceable system to prevent the illegal sale of cigarettes and

other tobacco products to minors, and also to discourage minors from adopting the habit of smoking.

History: 1994, PL 23-17.

13.1102 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Director" means the Director of Human and Social Services.
- (2) "Board" means the Tobacco Sales Hearing Board.
- (3) "Outlet" means any location, whether fixed or mobile, from which tobacco products are sold.
- (4) "Person" means an individual, partnership, or corporation.
- (5) "Public place" means any area to which the public is invited or in which the public is permitted, including but not limited to any right-of-way, mall or shopping center, park, playground, and any other property owned by the American Samoa Government.
- (6) "Tobacco product" means any product or commodity of which tobacco is a component, including, but not limited to cigarettes, cigars, raw processed or unprocessed tobacco, and chewing tobacco.
- (7) "Vending machine" means any machine or device designed modified or used to dispense cigarettes, cigars, tobacco or tobacco products upon the insertion of coin, slugs, tokens or paper money.

History: 1994, PL 23-17, 2006, PL 29-33.

13.1103 Identification required.

(a) No person shall sell or permit to be sold cigarettes or other tobacco products to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or older, unless the seller has some other conclusive basis for determining the buyer's age.

(b) It is prohibited for any person below the age of 18 years to sell or distribute tobacco products.

History: 1994, PL 23-17.

13.1104 License required.

Beginning on January 1, 1995, it shall be unlawful for any person to sell or distribute cigarettes or other tobacco products unless that person holds and maintains a valid license issued by the Director of Human and Social Services. The Director shall issue a license to all eligible applicants permitting the sale of tobacco products from a specific outlet, which shall be valid for a period of one year.

History: 1994, PL 23-17, 2006, PL 29-33.

13.1105 Display of license and sign.

A person holding a license issued under this chapter shall:

- (a) Prominently display the license, or a copy, at each outlet for which a license is issued; and
- (b) Prominently display a sign at each outlet that contains the following language in red lettering at least one-half inch high on a white background. "IT IS A VIOLATION

OF THE LAW FOR CIGARETTES OR OTHER TOBACCO PRODUCTS TO BE SOLD TO ANY PERSON UNDER THE AGE OF 18," and which includes a depiction of a pack of cigarettes at least two inches high defaced by a red diagonal line crossing the diameter of a surrounding red circle.

History: 1994, PL 23-17.

13.1106 Out of package sales prohibited.

It is unlawful to sell or distribute cigarettes or tobacco products in any form other than the manufacturer's package.

History: 1994, PL 23-17.

13.1107 Fee.

The annual license fee is \$25.00. Renewal of a license shall be made before January 1 of each year. A person violates the provisions of this chapter if he sells or distributes tobacco products after January 1 of each year without obtaining a valid license or renewal thereof.

History: 1994, PL 23-17.

13.1108 Nontransferability.

A tobacco retail license is non-transferable, except a new license will be issued to a tobacco retailer who changes location.

History: 1994, PL 23-17.

13.1109 Vending machine.

After December 31, 1994, cigarette vending machines or any other device for the sale or distribution of tobacco products are prohibited. Importation and possession of tobacco vending machines are prohibited.

History: 1994, PL 23-17.

13.1110 Tobacco samples prohibited.

No person shall knowingly distribute or furnish without charge, or cause to be furnished or distributed without charge, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, in any public place or at any event open to the public.

History: 1994, PL 23-17.

13.1111 Duties of the Director.

It shall be the duty of the Director to implement the purposes of this chapter and to administer and enforce the law. The Director shall:

- (1) issue licenses for the sale of tobacco products;
- (2) provide signs to parties licensed to sell tobacco products concerning the prohibition of tobacco sales to individuals under the age of 18;
- (3) initiate investigations of violations of this chapter;

- (4) seek and enforce civil penalties and fines for violation of this chapter;
- (5) initiate actions to suspend revoke, or deny renewal of a license; and
- (6) has the authority to deputize others to enforce the law as contained in this chapter.

History: 1994, PL 23-17.

13.1112 Suspension, revocation, and nonrenewal of licenses.

The Board shall suspend, revoke or not renew a license for a particular outlet after notice and opportunity to be heard is given.

(a) In the case of a first violation, the license shall be suspended for a period of not less than 14 days and not more than 30 days.

(b) In the case of a second violation, the license shall be suspended for not less than 30 days and not more than six months.

(c) In the case of three violations or more the license shall be revoked for the period of no less than two years within a three year period. The Board, in this instance, may also revoke a license permanently.

(d) The Director shall serve the licensee with notice of any adverse action, including a description of the violations alleged, a statement that the licensee may contest the decision by serving a written demand upon him within 10 days, and a statement that if the licensee does not appear at the hearing the Board will determine the case without his presence and render a decision accordingly.

History: 1994, PL 23-17, 2006, PL 29-33.

13.1113 Penalties.

(a) In addition to the provisions of section 13.1112 above, any person that violates any provision of this chapter shall be subject to the following civil penalties.

(1) Not less than \$1,000.00 for the first violation.

(2) Not less than \$2,000.00 for the second violation.

(3) Not less than \$3,500.00 for the third violation.

(4) \$5,000.00 for each violation in excess of three.

(b) Forms for citation for violation of the provisions of this chapter may be designed and approved by the Director of the Department of Human and Social Services.

(c) This act may be enforced by the designated officials of the Department of Human and Social Services, police officers of the American Samoa Government, and personnel deputized by the Director.

(d) Fifty percent of all funds that are derived from this section shall be segregated into an account which shall be used solely for the purpose of supporting enforcement of this chapter. Thirty percent of all funds that are derived from this section shall be segregated into an account which shall be used solely for smoking prevention and cessation program efforts undertaken by ASG within the Territory. The balance of funds that are derived from this section shall go the general fund.

History: 1994, PL 23-17, 2006, PL 29-33.

13.1114 Tobacco Sales Hearing Board.

There shall be a Tobacco Hearing Board consisting of three members appointed by the Governor to serve for four year terms. The Board shall select its chairperson. The functions of the Tobacco Hearing Board shall be as follows:

(a) to hear and determine cases pursuant to violations of this chapter; and
(b) to render decisions after hearing cases, and to issue penalties according to the provisions set forth in this chapter. No action against a license shall be effective until after the Tobacco Sales Hearing Board has rendered its decision; and

(c) the Board has the authority to make its own rules and regulations to further enforce the provisions of this chapter but such rules and regulations must not be inconsistent with the provisions of this chapter.

Should the Board fail to meet within thirty days' notice of any case, controversy, application or any other request which requires the Board's action, the Director is authorized to assume the duties and responsibilities of the Board in order to make an interim or final and binding decision on any matter. The decision of the Director in such an instance, shall be deemed the decision of the Board, as if such decision was reached by the Board itself. All such decisions shall be made in writing and shall be supported by facts and findings specific to the action. The Director's final decision shall comply with this chapter and any other rules officially promulgated by the Board.

History: 1994, PL 23-17, 2006, PL 29-33.

13.1115 Severability.

If any provision, clause, sentence, or paragraph of this act or the application thereof to any person or circumstances shall be held to be invalid, such invalidity shall not affect the provisions of this act which can be given effect without the invalid provision or application, and to this end the provisions are declared to be severable.

History: 1994, PL 23-17.

13.1116 Sale of cigarettes without health warnings.

(a) The Territory of American Samoa adopts the United States Cigarette Labeling and Advertising Act.

(b) It shall be unlawful for a person to sell or distribute in the Territory or to acquire, hold, own, possess, or transport for sale or distribution in the Territory, or to import or cause to be imported into the Territory for sale or distribution in the Territory any cigarettes which does not specify or conform to the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333.

(c) All products found in violation will be confiscated and destroyed.

History: 2000, PL 26-28.

Chapter 12

TOBACCO MASTER SETTLEMENT AGREEMENT

Sections:

13.1201 Definitions.

13.1202 Requirements.

13.1201 Definitions.

(1) "Adjusted for inflation" means increased in accordance with the formula for

inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term “person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) “Allocable Share” means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(B) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(C) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term “cigarette” includes “roll-your-own” (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette.”

(5) “Master Settlement Agreement” means the settlement agreement (and related documents) entered into on November 23, 1998, by the Territory of American Samoa and leading United States tobacco product manufacturers.

(6) “Qualified escrow fund” means an escrow arrangement with a federally or State chartered financial institution (or a financial institution chartered by the Territory of American Samoa) having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds’ principal except as consistent with section 13.1202 (b)(2) of this act.

(7) “Released Claims” means released claims as that term is defined in the Master Settlement Agreement.

(8) “Releasing Parties” means releasing parties as that term is defined in the Master Settlement Agreement.

(9) “Tobacco Product Manufacturer” means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(A) manufacturers cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and

provide that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(B) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) becomes a successor of an entity described in paragraph (A) or (B).

The term “Tobacco Product Manufacturer” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (A)-(C) above.

(10) “United States” means the United States of America, including the Territory of American Samoa.

(11) “Units sold” means the number of individual cigarettes sold in the Territory of American Samoa by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the Territory of American Samoa on packs (or “roll-your-own” tobacco containers) bearing the excise tax stamp of the Territory of American Samoa. The Department of Treasury shall promulgate such regulations as are necessary to ascertain the amount of Territory of American Samoa excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

History: 2000, PL 26-19; 2001, PL 27-10.

13.1202 Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the Territory of American Samoa (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligation under the Master Settlement Agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

2000: \$.0104712 per unit sold after the date of enactment of this act;

for each of 2001 and 2002: \$.0136125 per unit sold;

for each of 2003 through 2006: \$.0167539 per unit sold;

for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the Territory of American Samoa or any releasing party located or residing in the Territory of American Samoa. Funds shall be released from escrow under this subparagraph (I) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the Territory of American Samoa’s allocable share of the total payments that such manufacturer would

have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(I)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(I)(3) of that Agreement other than the Inflation Adjustment had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the Territory of American Samoa against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the Territory of American Samoa in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the Territory of American Samoa in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the Territory of American Samoa (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

History: 2000, PL 26-19; 2001, PL 27-10

Chapter 13

RESTRICTION OF SMOKING IN PUBLIC AND PRIVATE PLACES

Sections:

- 13.1301 This Act.**
- 13.1302 Definitions.**
- 13.1303 Smoking prohibited in public places.**
- 13.1304 Prohibition of smoking in places of employment.**
- 13.1305 Owners, lessees to post signs prohibiting or permitting smoking.**
- 13.1306 Violation of chapter—Fine—Authority for enforcement by police and public health—Nuisance.**
- 13.1307 Administrative management.**

13.1308 Pattern of non-compliance—Action on permit or license.

13.1309 Delimitation of Act.

13.1301 This Act.

This Act shall be known as the “American Samoa Smoke Free Environment Act.”

History: 2010, PL 31-24

13.1302 Definitions.

For purposes of this Act and chapter, the following terms shall have the meanings stated below:

(1) “Smoking” means the activity of inhaling and exhaling smoke from tobacco and other substances that are lit in cigars, cigarettes, and pipes, and to possess or transport cigars, cigarettes, pipes and smoking articles while lit.

(2) “Public place” means that portion of any building or government or commercial vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the American Samoa Government, or other public entity, and regardless of whether a fee is charged for admission or use.

Public places include, but are not limited to: Elevators, public conveyances such as buses, taxis, trains, airplanes, or other transportation facilities or means of transportation, museums, concert halls, theaters, auditoriums, exhibition halls, sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, legislative chambers, courthouses and the immediately adjacent hallways and offices, public restrooms, libraries, restaurants, waiting areas, lobbies, reception areas. A public place does not include a private residence, unless such residence is used as a licensed day care center.

(3) “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within a restaurant.

(4) “Places of Employment” means an area under the control of a public employer, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and government or commercial vehicles. For private employers, places of employment means those portions of the business premises which are used by or open to the public or employees of the business without specific invitation. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.

(5) “Enclosed Area” means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

(6) “Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(7) “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

(8) “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

(9) “Employer” means a person, business, partnership, association, corporation, trust, non-profit entity or government that employs the services of one or more individual persons.

(10) “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

History: 2010, PL 31-24

13.1303 Smoking prohibited in public places.

Smoking shall be prohibited in all enclosed areas of public places within the territory of American Samoa.

History: 2010, PL 31-24

13.1304 Prohibition of smoking in places of employment.

(a) Smoking shall be prohibited in all enclosed areas within places of employment as defined in 13.1302(4).

(b) This prohibition on smoking shall be communicated to all existing government employees by the effective date of this Act and to all its prospective employees upon their application for employment.

History: 2010, PL 31-24

13.1305 Owners, lessees to post signs prohibiting or permitting smoking.

Owners, or in the case of a leased or rented space the lessee or other person or manager in charge of the premises regulated under this chapter shall make every reasonable effort to prohibit smoking in public places by posting signs prohibiting or permitting smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance and prominent locations throughout the premises.

History: 2010, PL 31-24

13.1306 Violation of chapter—Fine—Authority for enforcement by police and public health—Nuisance.

(a) A person who smokes in an area where smoking is prohibited by the provisions of the Act shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this act shall be guilty of an infraction, punishable by:

(1) A fine not exceeding one hundred dollars (\$100) for a first violation.

(2) A fine not exceeding two hundred dollars (\$200) for each additional violation within one (1) year.

(c) In addition to the fines established by this Section, violation of this Act by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Department of Public Safety law enforcement officers, and Department of Health employees, designated by the Director of the department, shall enforce this section by issuing a citation, which shall be substantially in the same form as the “Uniform Traffic Ticket and Complaint—Summons” set forth in 22.0807 and following the procedure set forth in A.S.C.A. Title 22, Chapter 08, as applicable, when such officer, official or employee, based upon his personal investigation, and/or observance, has reasonable and probable grounds to believe that the person has committed an offense under a provision of this chapter. The Director of Public Health may authorize employees within the Department of Health to issue citations under this title as necessary, provided that any person so authorized has the training and experience necessary to perform the job as determined in consultation with the Attorney General.

(e) Violation of the Act is hereby declared to be a public nuisance, which may be abated by the Department of Health by restraining order, preliminary and permanent injunction, or other means provided for by law, and the territory may take action to recover the costs of the nuisance abatement.

(f) Each day on which a violation of this Act occurs shall be considered a separate and distinct violation.

History: 2010, PL 31-24

13.1307 Administrative management.

The Department of Health shall function as the lead agency for implementation, management, and enforcement of the Act, to include the following:

(1) The Director of the Department of Health shall adopt regulations in accordance with 4.1001, et seq., the Administrative Procedures Act, as necessary to implement this chapter and to provide for its effective and efficient administration.

(2) Department of Health shall develop and conduct a public education program to explain and clarify the purposes and requirements of this chapter to the public, and to guide owners, operators and managers in their compliance therewith. The program may include, but is not limited to, publication of a brochure for affected businesses and individuals explaining this chapter.

(3) Department of Health shall conduct familiarization training for its employees and those of other departments and agencies having enforcement responsibilities, to include refresher training at necessary periodic intervals.

(4) Department of Health shall collaborate and coordinate with other government departments and agencies, as well as community organizations, both local, national and international, which share common interests in achieving the intent of this Act, for the purpose of effectively and efficiently implementing this Act and providing mutual support for and continuity in programs with similar goals, but not for the purpose of supplanting such programs.

(5) Department of Health shall monitor enforcement efforts and notify relevant departments, agencies, boards and commissions of violators that persistently fail to comply with this Act or exhibit a pattern of non-compliance for the purpose of administrative action set forth in 13.1308.

History: 2010, PL 31-24

13.1308 Pattern of non-compliance—Action on permit or license.

(a) A person or business which operates or controls a public place facility that does not comply with this Act or that exhibits a pattern of non-compliance with this Act is subject to administrative action. For purposes of this section and chapter, a “pattern of non-compliance” is evidenced by being found guilty of three or more violations of this Act within a calendar year or being found guilty of five or more such violations within two consecutive years.

(b) Non-compliance with this Act or exhibiting a pattern of non-compliance shall provide a basis for suspension, revocation, non-renewal or other sanction of any license or permit issued by the government. After providing notice and opportunity for hearing pursuant to the Administrative Procedure Act, 4.1001, et seq., the department, agency, board or commission having regulatory authority over such business or activity may, based upon the record of evidence presented at any hearing, suspend, revoke, deny renewal of or otherwise restrict the license or permit issued or regulated by said department, agency, board or commission or impose such other sanction as appropriate. Such licenses include, but are not limited to, certificates of incorporation, permits to transact business as foreign corporations, business licenses, beer and/or alcoholic beverage permits, and/or health permits.

History: 2010, PL 31-24

13.1309 Delimitation of Act.

No provision of this Act shall restrict, impair, limit or affect the enforcement of other applicable statutory provisions, nor shall it be interpreted to permit smoking in an area in which smoking is prohibited by other applicable law or regulation.

History: 2010, PL 31-24

Chapter 14

(RESERVED)

Chapter 15

JUDICIAL COMMITMENT OF MENTALLY ILL OR DEFICIENT

Sections:

- 13.1501** **Diagnosis, treatment and care of mentally illness or deficiency.**
- 13.1502** **Commitment of mentally ill or deficient person—Notification procedure and emergency commitment procedure.**
- 13.1503** **Commitment hearing.**
- 13.1504** **Causes for commitment.**
- 13.1505** **Right to counsel.**
- 13.1506** **Transfers.**
- 13.1507** **Periodic review.**
- 13.1508** **Release.**
- 13.1509** **Apprehension.**
- 13.1510** **Civil rights and competency.**

13.1501 **Diagnosis, treatment and care of mental illness or deficiency.**

The diagnosis, treatment, and care of persons suffering from mental illness or deficiency shall be carried out in a manner and in places designated by the Director of Health or his designee. When commitment for mental illness or deficiency is indicated, person may be committed under 13.1502. In the event of commitment, it shall be the responsibility of the Director to insure an on-going program of medical and psychiatric treatment as required for the patient's disability.

History: 1980, PL 16-73 § 1.

13.1502 **Commitment of mentally ill or deficient person—Notification procedure and emergency commitment procedure.**

The trial division of the High Court may, after a hearing, involuntarily commit a mentally ill or deficient person within its jurisdiction to designated places for the care and treatment of those persons in the Territory. That person may thereafter be restrained to the extent necessary and reasonable for his own safety and that of the public. The hearing shall be held within 4 court days from completion of the following notification procedures:

(a) The person or persons petitioning the Court shall complete a certificate of need for emergency commitment. This certificate shall state the reasons for the need for emergency commitment. The certificate shall be completed and a copy shall be given as quickly as reasonably possible to the following:

- (1) the person to be committed;
 - (2) the physician involved for inclusion as a portion of the permanent medical record;
- and
- (3) the clerk of the trial division of the High Court.

(b) No further action may be taken to confine the person without the completion of a certificate of medical need for commitment by a physician authorized to practice medicine within the Territory. This certificate shall state the medical indications for emergency commitment. After completion of the certificate of medical need for commitment by the physician, the person may be confined as an emergency for safekeeping and treatment. The Director shall designate the places for the care and treatment of any person so confined. A copy of this certificate shall be given as quickly

as reasonably possible to the following:

- (1) the person to be committed;
 - (2) the physician involved for inclusion as a portion of the permanent medical record;
- and
- (3) the clerk of the trial division of the High Court.

(c) No person may be confined for longer than 72 hours as an emergency. Within 72 hours a second certificate of medical need for commitment shall be completed by a physician and a medical officer, one of whom shall be of Samoan heritage and who speaks the Samoan language, who shall have conducted an independent interview of the individual. In the event they do not concur in their recommendation of whether or not commitment is necessary, the opinion of a third qualified doctor shall be sought and the recommendation of the majority shall prevail. Upon completion of the second certificate of medical need for commitment by another physician, the person may be confined until the trial division of the High Court holds a commitment hearing not to be more than 4 court days from completion and receipt by the court of the second certificate of medical need. A copy of the second certificate of medical need for commitment shall be given as quickly as reasonably possible to the following:

- (1) the person to be committed;
 - (2) the physician involved for inclusion as a portion of the permanent medical record;
- and
- (3) the clerk of the trial division of the High Court.

(d) Failure to comply with any of the time limits established above shall be grounds for immediate unconditional release of the person so confined.

History:1980, PL 16-73 § 2.

13.1503 Commitment hearing.

A commitment hearing shall be held, and shall require the testimony in open court of the following:

- (1) the person or persons completing the certificate of need for emergency commitment;
- (2) the physicians who completed the first and second certificates of medical need for commitment;
- (3) the person about whom the court is considering commitment; and
- (4) any other person or persons considered necessary by the court.

History:1980, PL 16-73 § 3.

13.1504 Causes for commitment.

(a) Mental illness or deficiency are not of themselves sufficient cause for involuntary confinement under this chapter. Only the following are specific causes for commitment:

- (1) danger to others;
- (2) danger to self; and
- (3) inability to care for self to such a degree as to make continual care necessary.

(b) If the person to be committed is being committed due to the need for continual care and not because he is dangerous to himself or others, then all reasonable steps should be taken to attempt placement in the home of a responsible family member or friend.

(c) Upon satisfaction of the court by clear and convincing evidence that specific cause exists for commitment, the Court shall make an order as it considers in the best interest of

the public and of the committed person for that person's custody and transportation to the place of commitment. However, a commitment may not issue unless the court is satisfied that all reasonable alternatives short of commitment have been pursued and found to be ineffective.

History:1980, PL 16-73 § 4, amd 1981, PL 17-12 § 1.

Research Guide: Addington v Texas, (1979), L. Ed. 2d, 323 99 Supreme Court 1804.

13.1505 Right to counsel.

(a) At all stages of the commitment process, commencing with the second certificate of medical need for commitment and until ultimate release from commitment, the person about whom the court is considering commitment shall be represented by legal counsel, either of his own choosing at his own cost, or counsel appointed by the court. The court shall make the appointment at the time of calendaring the commitment hearing, and may appoint either private counsel or the public defender's office. Private counsel if appointed shall be reimbursed by the court in a reasonable amount. Counsel shall have access to any and all records pertaining to the hearing before the court and to the medical history of his client. In the event counsel deems it necessary, he shall have the right to continue the commitment hearing in the interest of his client, and shall have the right to introduce the testimony and exhibits on his client's behalf anew.

(b) The person to be committed shall have the right to be present at all times during the hearing process; provided, however, that he may be excused if the court is satisfied from preliminary testimony of a psychiatrist that the defendant would be harmed by hearing some of the testimony, or if the defendant is so violent that he cannot be restrained during the hearing.

(c) He shall have the right to subpoena witnesses of his own choice.

(d) He shall have the right of cross examination.

(e) The burden of proof lies with the persons seeking commitment, and no commitment shall issue without clear and convincing proof of the need therefor.

History:1980, PL 16-73 § 5.

13.1506 Transfers.

Persons committed under this chapter may be transferred to institutions outside of the Territory considered suitable for their care by order of the Director. If a transfer is effectuated, the provisions of 13.1507 shall be suspended and review of necessity for commitment shall be in accordance with the legal requirements of the jurisdiction to which the committed person is sent.

History:1980, PL 16-73 § 6.

13.1507 Periodic review.

At 9-month intervals following the date of original commitment, review hearings shall be had before the trial division of the High Court. No more than 10 days prior to all hearings the person committed shall be independently examined by at least 2 physicians or medical practitioners, and the hearing shall be conducted in accordance with all the provisions of this chapter including those included in 13.1503, 13.1504, and 13.1505.

History:1980, PL 16-73 § 7.

13.1508 Release.

The physician in charge of places designated for the treatment of mentally ill or deficient persons may at any time and without the necessity of a review hearing release the person with termination of commitment when in his judgment the specific cause for commitment no longer exists, with exception: if the person is being held on order of a Court having criminal jurisdiction in a proceeding arising out of a criminal offense, he may not be released.

History:1980, PL 16-73 § 8.

13.1509 Apprehension.

Persons who have been committed under this chapter who are absent on leave or escape from the place to which they have been committed, may upon direction of the person in charge of that place of commitment be returned by policemen, or officials or employees of that place of commitment, using force as may be reasonably necessary to effect the return.

History:1980, PL 16-73 § 9.

13.1510 Civil rights and competency.

A presumption of legal incompetency shall exist with respect to any person committed under this chapter. The fact of the commitment shall not otherwise itself modify or vary any civil right of the person committed.

History:1980, PL 16-73 § 10

Part II. Economic Welfare

Chapter 21

STATISTICS DIVISION

Sections:

- 13.2101 Short Title.**
- 13.2102 Purpose.**
- 13.2103 Creation of a Statistics Division—Authorization for coordination of surveys.**
- 13.2104 Powers and duties of the Statistics Division.**
- 13.2105 Organization and staff of the Statistics Division.**
- 13.2106 Censuses of population and housing and other special censuses.**
- 13.2107 Confidentiality of information.**
- 13.2108 Statistical advisory council.**
- 13.2109 Authorization of appropriations.**
- 13.2110 Procurement of professional services.**
- 13.2111 Penalties.**
- 13.2112 Administrative penalties.**

13.2101 Short title.

This Act may be cited as the American Samoa Statistical Act of 2003.

History: 2004, PL 28-26.

13.2102 Purpose.

This Act is enacted to (1) mandate the collection, tabulation, compilation, publication, and reporting of official statistics; and (2) ensure the accuracy of statistics and efficiency of the statistical system by a comprehensive coordination of statistical activities and realignment of statistical operations in American Samoa.

History: 2004, PL 28-26.

13.2103 Creation of a Statistics Division—Authorization for coordination of surveys.

(a) There is created, within the Department of Commerce, a Statistics Division to be headed by a Chief of Statistics.

(b) The Statistics Division is authorized to collect, tabulate, compile, analyze, publish and report all official statistics covering social, economic and demographic fields as required for the purpose of making policy decisions; and to carry out the purposes of this Act; and to conduct pertinent censuses and surveys.

(c) Information shall be collected to enable the production of official statistics relating to the following:

- (1) population and housing;
- (2) health, welfare and moribidity;
- (3) law enforcement and the administration of justice;
- (4) social and physical environment data;
- (5) labor force, employment and unemployment;
- (6) accidents and injuries;
- (7) income, expenditure and taxation;
- (8) land tenure, land use and agriculture;
- (9) assets and liabilities;
- (10) prices;
- (11) trade and financing;
- (12) travel and tourism;
- (13) communication and transportation;
- (14) economic, financial, manufacturing, production and administrative;
- (15) all government maintenance and operation programs;
- (16) all government capital improvements projects;
- (17) canneries and fisheries; and
- (18) other related activities.

(d) The Director of the Department of Commerce, in consultation with the Chief of Statistics, may adopt, amend, and repeal rules under the Administrative Procedure Act, A.S.C.A., §§ 4.1001 et seq., governing the collection, tabulation, compilation and publication of official statistics, and all other similar matters which in his judgment shall be necessary to carry out the purposes of this Act. The rules, when adopted in conformity with A.S.C.A., §§ 4.1001 et seq., have the force and effect of law.

(e) All department and agency heads, government employees, private individuals and businesses required by this Act, or by regulations duly promulgated and adopted by the Department of Commerce, to provide required information, shall inform, submit or

provide such information to the Statistics Division without delay.

(f) The Statistics Division is empowered to coordinate all censuses, including American Samoa Government and the United States Federal censuses; the census of Population and Housing; the census of Agriculture; the Census of Economic and any other census as mandated by federal laws.

(g) The Statistics Division is empowered to plan, design and execute various types of statistical surveys that are necessary for compilation and publication of the official statistical system. Any statistical surveys to be conducted by any branch or subdivision of the American Samoa Government shall be approved by the Statistical Advisory Council and coordinated with the Statistics Division prior to undertaking such survey.

(h) The production of official statistics relating to items (1) through (18) in subsection (c) above shall be fully coordinated with the activities engaged in the production of Gross Domestic Product (GDP) estimates. Specifically, (1) the measurement of income, expenditure and taxation must follow NIPA conventions using approved Bureau of Economic Analysis (BEA) methodology; (2) measurement of prices must follow Bureau of Labor Statistics (BLS) standards to ensure that price deflation of the NIPA aggregates is valid; (3) measurement of trade and financing must follow NIPA conventions enumerated in the applicable BEA publications on balance of payments; and (4) measurement of economic, financial, manufacturing, production and administrative must be baselined in the quinquennial Economic Census, and geared towards producing value added estimates of GDP.

History: 2004, PL 28-26.

13.2104 Powers and duties of the Statistics Division.

(a) The Statistics Division is empowered to: (1) collect and provide information required by the American Samoa Government and its subdivisions for policy making and program planning and implementation; and (2) effectively coordinate all phases of statistical activities in American Samoa.

(b) The specific duties of the Statistics Division are;

(1) to make such statistical reports as specified in this Act;

(2) to develop and establish statistical policy matters;

(3) to plan, design, and collect the statistical information specified in this Act;

(4) to compile, analyze, abstract and publish official statistics outlined in this Act;

(5) to coordinate and provide technical assistance as needed for all statistical activities being carried out in other departments or agencies of the American Samoa Government;

(6) to define and establish a statistical standard as a basis for official statistics in American Samoa. For purposes of measuring overall levels of economic activity, the standard will be Gross Domestic Product (GDP) or GDP per capita. For individual well-being, the standard will be personal income per capita;

(7) to make or construct statistical estimates, forecasts, projections, and models as necessary or appropriate. Whenever feasible, such statistical constructs must be based upon NIPA data and constructs;

(8) to plan, design and undertake censuses and surveys specified in this Act;

(9) to examine, evaluate, and interpret any published or unpublished statistical data as it relates to American Samoa;

(10) to plan, design, and undertake statistical education and training through

workshops, seminars and conferences for employees of the American Samoa Government, and the public as needed;

(11) to serve as the lead agency statistical matters for American Samoa in contacting and interacting with Federal, State, other Territorial, and local agencies, international and regional organizations, and private organizations and citizens;

(12) to plan, design, and carry out research, field studies, experiments, and such other activities for furthering development of statistical sciences;

(13) with the advice of the Statistical Advisory Council, to decide the procedures and methods employed in the provision of all statistics produced compiled by the Statistics Division, including the extent, form, and timing of statistical publications;

(14) as soon as practicable, but no later than June 30th of each calendar year, to publish an Annual American Samoa Statistical Yearbook covering the range of statistics stated in this Act;

(15) as soon as practicable, to publish other statistical reports, such as unemployment (HHEIS) statistics, and special census and survey reports as timely as possible;

(16) at the discretion of the Chief of Statistics, to undertake other activities relating to statistical activities recommended by the Statistical Advisory Council.

History: 2004, PL 28-26.

13.2105 Organization and staff of the Statistics Division

(a) The Statistics Division shall consist of at least the following four units: (1) Statistical Planning and Coordination; (2) Population and Social Statistics; (3) Economic Statistics; and (4) Statistical Data and Information Management. The duties and responsibilities of each unit shall be as specified by the Chief of Statistics.

(b) The Statistics Division shall be headed by a Chief of Statistics, appointed by the Director of the Department of Commerce. The Chief shall perform such duties as may be imposed upon him by law, regulations, or directives of the Director of the Department of Commerce.

(c) In addition to such staff as may be required to assist the Statistics Division in performing duties mandated by this Act, and subject to budgetary appropriation, the Department of Commerce may obtain technical advisory services from statisticians, survey specialist and/or computer experts, and employ, as needed, enumerators and interviewers on a part-or full-time basis.

History: 2004, PL 28-26.

13.2106 Censuses of population and housing and other special censuses.

(a) The Statistics Division shall be the agency responsible to plan, design and undertake the Decennial Censuses of Population and Housing in collaboration with the U.S. Bureau of the Census, or the federal agency charged with such responsibilities. In addition to the Decennial Censuses of Population and Housing,--the Statistics Division shall plan, design and undertake the mid-decade censuses of population and housing in American Samoa, on or about April 1st in the years ending with five (5), which is the exact mid-point of the Decennial Censuses. In such undertakings, the Statistics Division may ask and obtain technical and other-assistance from the U.S. Bureau of the Census, Washington, D.C., or other agencies.

(b) The Statistics Division is empowered to plan, design and undertake other special

censuses, including, but not limited to, Census of Agriculture, Census of Establishments, Industrial Census, Census of Manufacturing, Census of Wholesale and Retail Trade, in collaboration with the U.S. Bureau of the Census or other appropriate agencies. In all such undertakings, the Statistics Division is to seek the advice of the Statistical Advisory Council concerning the scope, approach, funding and other requirements of such special censuses.

History: 2004, PL 28-26.

13.2107 Confidentiality of information.

(a) Every employee of the Statistics Division shall take and subscribe to a statutory declaration to the effect that he or she will faithfully and honestly fulfill his duties as an employee of the Statistics Division in conformity with the requirements of this Act, and will not disclose or make known any information or statistical data that are acquired under this Act, except as otherwise provided by law. Any information or statistical data that are collected for statistical purposes shall be kept for those purposes, and confidentiality of such information shall be strictly maintained.

(b) Confidential information obtained from individuals, households, organizations, and other entities, in the process of compilation of statistical data, shall be treated as such.

(d) Neither the Chief of Statistics nor any other employee of the Statistics Division may, except as otherwise provided by law:

(1) use the information furnished under the provisions of this Act for any purpose other than the statistical purposes for which it was obtained; or

(2) make any publication whereby the data furnished by any particular establishment or individual under this Act can be identified; or

(3) permit anyone, other than the sworn officers and employees of the Statistics Division, to examine the individual reports.

(e) No department, bureau, agency, officer, or employee of the American Samoa Government, except the Director of the Department of Commerce and the Chief of Statistics in carrying out the purposes of this Act, may require, for any reason, copies of census reports or statistical information which have been retained by any establishment or individual. Copies of census reports and statistical information which have been so retained shall be immune from legal process, and shall not, without the consent of the individual or establishment concerned, be admitted as evidence or used for any purpose in any action, suit or other judicial or administrative proceeding.

History: 2004, PL 28-26.

13.2108 Statistical advisory council.

(a) There shall be a Statistical Advisory Council established as a consultative body to the Statistics Division on matters of statistical activities. The Council shall also recommend policies, programs and procedures for statistical activities.

(b) The functions of the council shall include:

(1) review of censuses, surveys and compilation of various statistics;

(2) provide assistance with the analysis and evaluation of survey results; and

(3) offer suggestions for the development and improvement of statistics.

(c) The statistical advisory council shall consist of the following members:

Lieutenant Governor (Chairman),

Director of the Office of Program Planning & Budget Development,
Director of the Department of Commerce,
Director of the Department of Health,
Head of the American Samoa Environmental Protection Agency,
Director of the Department of Education,
Attorney General,
Secretary of Samoan Affairs,
Director of Port Administration,
Treasurer,
Director of the Office of Women's Affairs,
President of the Community College of American Samoa,
The District Governors,
One (1) member of the Senate,
One (1) member of the House of Representative,
One (1) representative of the Chamber of Commerce; and
Three (3) members from the private sector appointed by the Governor.

History: 2004, PL 28-26.

13.2109 Authorization of appropriations.

There is authorized to be appropriated in accordance with budget procedure laws and regulations, out of the Treasury of American Samoa, such sums as may be necessary to carry out the provisions of this Act.

History: 2004, PL 28-26.

13.2110 Procurement of professional services.

The Chief of Statistics, with the approval of the Director of the Department of Commerce, and subject to budgetary appropriation and procurement rules and procedures, shall have authority to contract with educational and other research organizations for the preparation of reports and materials of a similar nature.

History: 2004, PL 28-26.

13.2111 Penalties.

(a) Whoever, being over eighteen years of age, refuses or willfully neglects, when requested by the Director of the Department of Commerce, the Chief of Statistics, or any other authorized employee or agent of the Statistics Division, to answer, to the best of his knowledge, any of the questions on any schedule submitted to him in connection with any statistical collection, census, or survey provided for by this Act, applying to himself or to the family to which he belongs or related, or to the farm or farms of which he or his family is the occupant, shall be fined not more than \$200.00.

(b) Whoever, when answering questions authorized for the purposes of carrying out this Act, and under the conditions and circumstances described in subsection (a) of this section, willfully gives any answer that is false, shall be fined not more than \$500.00.

(c) Notwithstanding any other provision of this Act, no person shall be compelled to disclose information regarding his religious beliefs or membership in a religious body.

(d) Whoever, either directly or indirectly, offers or renders to any officer or employee of the Statistics Division engaged in making an enumeration of population, any

suggestion, advice, information or assistance of any kind, with the intent or purpose of causing an inaccurate enumeration of population shall be guilty of a class A misdemeanor and upon conviction shall be sentenced accordingly.

(e) Whoever, being the owner, proprietor, manager, superintendent, or agent of any hotel, apartment house, boarding or lodging house, barracks, tenement, or other building, refuses or willfully neglects when requested by the Director of the Department of Commerce, the Chief of Statistics, or their designee, acting under the authority of this Act, to furnish the names of the occupants of such premises, or to give free ingress and egress therefrom to any duly accredited representative of the Director of the Chief of Statistics, so as to permit the collection of statistics as provided for in this Act, or any survey being taken or made, the proper and correct enumeration of all persons having their usual place of abode in such premises, shall be fined not more than \$500.00.

(f) Whoever, being the owner, official, agent, person in charge, or assistant to the person in charge, of any company, business, institution, establishment, religious body or organization of any nature whatsoever, neglects or refuses when requested by the Statistics Division, or authorized agent thereof, to answer completely and correctly to the best of his knowledge all questions relating to his company, business, institution, establishment, religious body, or other organization, or to records or statistics in his official custody, contained on any census or other schedule or questionnaire prepared and submitted to him under the authority of this law, shall be fined not more than \$500.00 per day that he neglects or refuses to answer such request completely and correctly; and if he willfully gives a false answer to any such question, he shall be guilty of a class D felony and upon conviction shall be sentenced accordingly.

(g) Whoever, being an employee of the Statistics Division and having taken and subscribed to the oath of office in accordance with this Act, neglects or refuses, without justifiable cause, to perform the duties required of such employee by this Act shall be fined not more than \$500.00.

(h) Whoever, being an officer, agent, or employee referred to in this Act, willfully and knowingly swears or affirms falsely as to the truth of any statement required to be made or subscribed by him under oath by or under authority of this Act, shall be guilty of perjury, a class D felony under this Act, and upon conviction shall be sentenced accordingly.

(i) Whoever, being an officer or employee referred to in this Act (1) willfully and knowingly makes a false certificate or fictitious return; or (2) knowingly or willingly furnishes or causes to be furnished, or, having been such an officer or employee, knowingly or willfully furnished or caused to be furnished, directly or indirectly, to the Director of the Department of Commerce, the Chief of Statistics, or to any other officer or employee of the Department of Commerce, any false statement or false information with reference to any inquiry for which he was authorized and required to collect information provided for this Act, shall be guilty of a class D felony and upon conviction shall be sentenced accordingly.

(j) Whoever, being or having been an employee or staff member referred to in this Act, having taken and subscribed the oath of office, publishes or communicates any information, the disclosure of which is prohibited by the provisions of this Act, and which comes into his possession by reason of his being employed (or otherwise provided services) under the provisions of this Act, shall be guilty of a class D felony and upon conviction shall be sentenced accordingly.

(k) The Director of the Department of Commerce is authorized to assess, impose and

collect the fines provided for in this section, excluding those which may be assessed in conjunction with sentencing for a conviction of a misdemeanor or felony under this section. Imposition of those fines imposed by the Director of the Department of Commerce may be appealed to the Administrative Law Judge.

History: 2004, PL 28-26.

13.2112 Administrative penalties.

(a) No civil or criminal penalties pursuant to the foregoing provisions shall attach, unless the Director of the Department of Commerce has reviewed the facts surrounding the possible infraction, and has assessed an administrative remedy, in accordance with the Administrative Procedures Act, A.S.C.A., §4.1001, et. seq.

(b) In certain cases, where the facts reveal a knowing or willful act on the part of the charged party, to mislead the Director of the Department of Commerce, the Chief of Statistics, or an authorized agent of the Statistics Division in verbal or written responses to questions posed by any of the foregoing parties, in order to evade process or prosecution for a crime under the laws of the Territory, or to hinder an ongoing investigation or prosecution of a crime under the laws of the Territory, or for any pecuniary gain, the Director may forego an administrative review under subparagraph (a) of this provision, and forward directly to the Commissioner of Public Safety and/or the Attorney General, copies of all information on file regarding the possible violation.

(c) In addition to any penalty or liability under other law or provisions of this Act, whoever, being or having been an officer, employee or staff member referred to in this Act, violates the provisions of this Act while being employed by the American Samoa Government (or otherwise providing services thereto), shall be subject to appropriate administrative disciplinary actions, including, when circumstances warrant, suspension from duty without pay, or removal from office.

(d) Administrative penalties imposed pursuant to this section may be appealed to the Administrative Law Judge.

History: 2004, PL 28-26.