

Public Health Emergency Law

CDC Foundational Course for Front-line Practitioners

Developed by

U.S. Centers for Disease Control and Prevention



Public Health Emergency Law

- Unit 1: Course Introduction and Basic Concepts
- Unit 2: Legal Issues: Detecting and Declaring Emergencies
- **Unit 3: Emergency Powers I: Protection of People**
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Unit 3 Emergency Powers I: Protection of People



Disclaimer

These course materials are for instructional use only and are not intended as a substitute for professional legal or other advice. While every effort has been made to verify the accuracy of these materials, legal authorities and requirements may vary from jurisdiction to jurisdiction. Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.



Unit 3 Objectives

By the end of this unit, participants should be able to:

1. Understand the emergency public health powers available for mandatory isolation/quarantine
2. Understand the emergency public health powers available for mandatory vaccination & treatment
3. Understand legal issues of particular importance to special populations during public health emergencies



Objective 3.1

Understand the
Emergency Public Health
Powers Available for
Mandatory
Isolation/Quarantine



Hypothetical Example (Cont.)

Recall from Unit 2:

Day 10 - noon: Pneumonic plague confirmed. 2000 cases reported throughout city. Hospitals overflowing.

Day 10 – 2:00 PM: In order to stop spread of disease, it is necessary to:

- Separate infected patients from the uninfected
- Shut down transportation: trains, cars, buses, planes
- Vaccinate those in areas still unaffected

(cont. next slide)



Hypothetical Example (Cont.)

- Day 11:
 - After TV news story on side effects – many refuse to be vaccinated
 - Thousands break quarantine
 - Food shortages - trucks not entering quarantine area



State and Federal Power to Act in a Public Health Emergency

- Key powers include ability to order mandatory
 - Isolation/quarantine
 - Immunization, testing and other treatments
 - Evacuation/restrictions on travel



State Powers

In every state:

- Police power to protect public health and safety
- Statutes generally provide powers for mandatory immunization, testing, treatment, isolation and/or quarantine

Subject to constitutional and statutory procedural protections



Quarantine and Isolation: Definitions

Isolation:

- *“Isolation refers to the separation of persons who have a specific infectious illness from those who are healthy and the restriction of their movement to stop the spread of that illness. . . .”*

Quarantine:

- *“Quarantine refers to the separation and restriction of movement of persons who, while not yet ill, have been exposed to an infectious agent and therefore may become infectious. “*

Excerpted from CDC's Division of Global Migration and Quarantine Website



Quarantine and Isolation: Key Issues #1

- **When** is quarantine/isolation authorized?
- **Who** can authorize?
 - *Health Officer, Governor, or Local Government Executive*
- **What procedures** need to be followed?
 - *Notice, hearing, appeal*



Quarantine and Isolation: Key Issues #2

- **For How Long?**
 - *Until medical exam or for period of time unless confirmed by court order after hearing*
- **Where?**
 - *Medical facility, detention center, or home or (in some states) other place of individual's choosing*
- **How?**
 - *Communications, enforcement, logistical and staffing requirements*



Quarantine and Isolation: Kansas

When authorized:

If it is medically necessary and reasonable to prevent or reduce the spread of a disease or outbreak

Who orders:

Secretary of Kansas Dept. of Health & Environment
Local Health Officer



Quarantine and Isolation: State Examples

For How Long:

Until the health officials determines the individual(s) no longer poses a substantial risk of transmitting the disease or condition

However, if the order is challenged and upheld by the district court, any order of the court authorizing isolation or quarantine is only effective for up to 30 days



Quarantine and Isolation Procedural Requirements

Quarantine/isolation *restricts liberty* of individual

– *Similar to criminal arrest or civil commitment*

Triggering right to “due process” hearings

– *Right to notice*

– *Right to counsel*

– *Right to hearing on request*

– *Rational/reasonable basis for detention*



Quarantine Example: Hearing Requirement

An order by the Secretary of KDHE or Local Health Officers must inform the individual(s) of their right to request a hearing in district court to contest the order

The hearing must be held within 72 hours, but this can be extended for good cause



Quarantine and Isolation Procedures: Kansas Law

Order must also:

Be in writing

Identify the individuals/groups involved

Identify the premises involved

Identify the disease suspected

State the date/time the order commences

State the basis for quarantine/isolation



Quarantine and Isolation Hearings: Typical Requirements

- Quarantine/Isolation Administrative Order
- Supporting Affidavits/Factual Findings
- Notice/Explanation of Due Process Procedures
- Service of Process: Likely by Law Enforcement Officers
- Opportunity to Confront Accuser:
 - Arrange for appearances at hearing
 - Possible telephonic/electronic hearings



Quarantine and Isolation Hearings: Role of Judiciary

Procedural Readiness:

- Systems for large number of hearing requests in event of mass quarantine
 - Procedures for handling service of process
 - Court appointed counsel
- “In person” vs. electronic/telephonic hearings
 - Measures to protect safety of hearing officers and participants
- Clarity in documentation/affidavits required in mass quarantine environment



The “Where and How” of Quarantine: Substantive Requirements

- *Detention must be “by least restrictive means necessary”*
 - *including “confinement in private homes or other public or private premises”*
- *Separate isolated from quarantined individuals*
- *Monitor health status of individuals*
- *Attend to needs of detained individuals*
 - *food, clothing, medical treatment, communication, shelter*
- *Safe and hygienic detention facility*
- *Consider cultural and religious beliefs (“to the extent possible”)*



“Where/How”: Alternatives to Mandatory Quarantine/Isolation

In lieu of quarantine, the objective of preventing transmission of disease may be met by:

- Use of masks, gloves
- “Snow Day” and “Shelter-in-Place”
- Voluntary isolation/quarantine (in designated facility)
- Telephone monitoring in the home
- “Work Quarantine”
- Active use of law enforcement officers to serve process and monitor

These are less restrictive alternatives to mandatory quarantine



Federal Powers: Quarantine/Isolation

- The Surgeon General/CDC, through its Division of Global Migration and Quarantine, is empowered to detain, medically examine, or conditionally release persons suspected of carrying certain communicable diseases
- Authority applies only if the communicable disease has been designated in an executive order of the President
 - SARS was added to list in only two weeks
 - Avian flu was added to the list in April 2005



Scope of Federal Power to Quarantine Individuals

- *Interstate/International - persons entering:*
 - *into the United States or possessions from foreign countries, or*
 - *from one state or possession into any other state or possession*
- ***BUT ALSO:***
- *Within a state, if individual is reasonably believed to be infected*
 - *If state/local disease control measures inadequate to control spread of disease*
 - *Generally close coordination between state and*

CDC

Federal Powers: Quarantine Procedural Requirements

- Federal statutes specify few procedural requirements for imposition
- Constitution requires due process when depriving an individual of liberty:
 - *Notice and hearing requirements*
 - *Showing detention needed to protect public health*
 - *Right to counsel; reviewable final decision*
- Provision for the following is required:
 - *Access to food, water, medical supplies & treatment*

Basic needs for survival



Federal Powers:

Quarantine of International Goods

- *Quarantine of Goods*

- *Where serious danger of introduction of disease into U.S., from a country or places, and*
- *Danger is increased with entry into U.S. of people or things*
- *Surgeon General can prohibit entry of people or things from that country or place for such time as determined to be necessary*

- **Enforcement of Quarantine Laws**

- Fine of \$1000
- Imprisonment for not more than one year



Federal & State Powers: Quarantine of Agricultural Goods

- Quarantine of Goods
 - Federal powers covered by U.S. Dept. of Agriculture (USDA) and the FDA
 - Covered by state departments of agriculture and related agencies
- Enforcement of Quarantine Laws
 - By these same agencies
 - In conjunction with law enforcement, if necessary



Federal Powers: Quarantine of Travel

A person who has a communicable disease in the communicable period:

- *Shall not travel from one state or possession to another. . .*
- *Without a permit from the health officer of the state, possession, or locality of destination, if such permit is required under the law applicable to the place of destination*



Federal & State Powers: Restrictions on Movement and Travel

- Health authorities (federal/state/local) can restrict movement into or out of infected region
 - *Cordon Sanitaire*: place yellow tape around infected area/prohibit movement into/out of area
 - Logistical/due process issues build with time: need to allow food & medicine into region adequate for population confined
- State authorities also have authority to order evacuations



Quarantine & Isolation Enforcement

- Police
- National Guard - called up by Governor
- National Guard - federalized by President
- Military forces can be summoned
 - *Enforcement of state quarantine is an exception to prohibition on use of military for domestic law enforcement*



Objective 3.2

Understand the Emergency
Public Health Powers
Available for Mandatory
Vaccination & Treatment



State/Local Authority to Require Vaccination or Treatment

Secretary of KDHE or Local Health Officer can order a person to seek appropriate evaluation and treatment, including vaccination, medical examination, treatment or testing

If the person refuses the Secretary or Local Health Officer can order the person to be quarantined or isolated until they no longer pose a substantial risk to the public



Mandatory Vaccination: Historical Background

Principal case on constitutionality of mandatory vaccination:

- *Jacobson v. Massachusetts*, U.S. Supreme Court (1905)
 - 1902 smallpox outbreak in Cambridge, MA
 - Conviction for refusal to be vaccinated
 - Police power embraces “reasonable regulations” to protect public health and safety
 - *“Upon principle of self defense, community has a right to protect itself against an epidemic disease”*



Mandatory Treatment: Recent Case

Confinement for treatment

- *Best v. Bellevue Hospital New York (2004)*
 - TB patient confined when sought to leave hospital/ refusing TB treatment
 - Filed suit against health department & hospitals
 - Was Mr. Best dangerous to himself and community?
 - Did Mr. Best have adequate right to hearing?
- Health Department prevails
 - After 4 hearings and over 7 administrative and state and federal judicial orders over 2 years



State Powers: Agricultural Goods

- Immunization, Treatment or Destruction of Agricultural Goods
 - Covered by state departments of agriculture and related agencies
 - Compensation for destroyed animals and premises is provided in some states
- Enforcement
 - By these same agencies
 - In conjunction with law enforcement, if necessary



Federal Powers: Vaccination

- No existing general authority for federal government to mandate vaccination
 - Department of Defense and Department of State can require vaccination of servicemen after following specified procedures
- Smallpox Emergency Personnel Protection Act of 2003
 - Encourages vaccination by providing liability protection (for some of those vaccinating) and
 - Compensation for injuries caused by vaccination



Federal Powers: Agricultural Goods

- Immunization, Treatment or Destruction of Agricultural Goods
 - Covered by US Department of Agriculture (USDA) and the FDA
- Enforcement
 - By these same agencies
 - In conjunction with law enforcement, if necessary



Objective 3.3

Understand Legal Issues of
Particular Importance to Special
Populations During Public Health
Emergencies



Legal Issues of Importance During Public Health Emergencies

- Special populations
- Other Issues
 - Mass incidents
 - Obligations to those under quarantine
 - Voluntary compliance
 - Lessons from Canada



Important Legal Issues

Special Populations: Logistical Challenges

- Essential Public Service Workers
 - Procedures for priority access to examinations and treatments
- Language
 - Many languages spoken
 - Language impacts communication – and “due process”
- Religious objections & dietary restrictions
 - Protecting First Amendment & Equal Protection rights while protecting public health



Special Populations: Groups with Specific Protections

- ADA Covered Populations
 - Elderly
 - Infirm
 - Hospitalized
- Confined Populations and Providers (inmates and wardens)
 - Medical treatment
 - Habitable accommodation
 - Protection from known threats



Important Legal Issues: Mass Incidents

- Courts have not faced a true mass incident since flu pandemic in 1918-1919
- Requirements for individual hearings will likely be relaxed when facing mass incident
 - *E.g., New York Health Code 11.55*
- Quarantine/treatment plans, even if on mass scale, must have provision for the individual differences of the population



Important Legal Issues: Obligations to Those Under Quarantine:

- Must provide: food, medical care, safety & sanitary needs
- Key concerns include:
 - *How to provide these services without endangering the delivery people?*
 - *How to address special needs?*



Important Legal Issues: Encouraging Voluntary Compliance

- Large quarantine with consent of those involved is more effective
- Even with voluntary compliance, there are factors that undercut compliance:
 - *Lost wages or income*
 - *Groceries and essential services*
 - *Boredom*



Important Legal Issues: Lessons from Canada: SARS

Communications in Toronto “demystified” quarantine

- 300,000 calls to hotlines staffed by 80 nurses
- Community meetings were held
- Information posted on websites in 14 languages

Substantial “Social Cohesion” in PH Emergency

“When presented with clear communication & practical guidance, public behavior can be very responsible in a public health emergency.”



Lessons from Canada: SARS Quarantine Enforcement

Canadian experience with SARS

- Over 30,000 quarantined in Toronto by provincial health authorities
 - Mandatory requirement that those exposed stay home
- Only 27 formal quarantine orders were served
- Only ONE formal appeal
 - Later voluntarily withdrawn after explanation



Unit 3

Key Takeaways - Summary

1. Know the Legislation
2. Plan “Due Process”
3. Draft Documents in Advance
4. Contact Other Jurisdictions
5. Engage the Courts in Advance
6. Anticipate Practical Problems
7. Communication is Critical



Hypothetical Example (Cont.)

What Happens Next?

- All hospitals filled to overflowing
- More patients need ventilators than are available
- Adequate pharmaceuticals available for confirmed cases: the “worried well” demand access



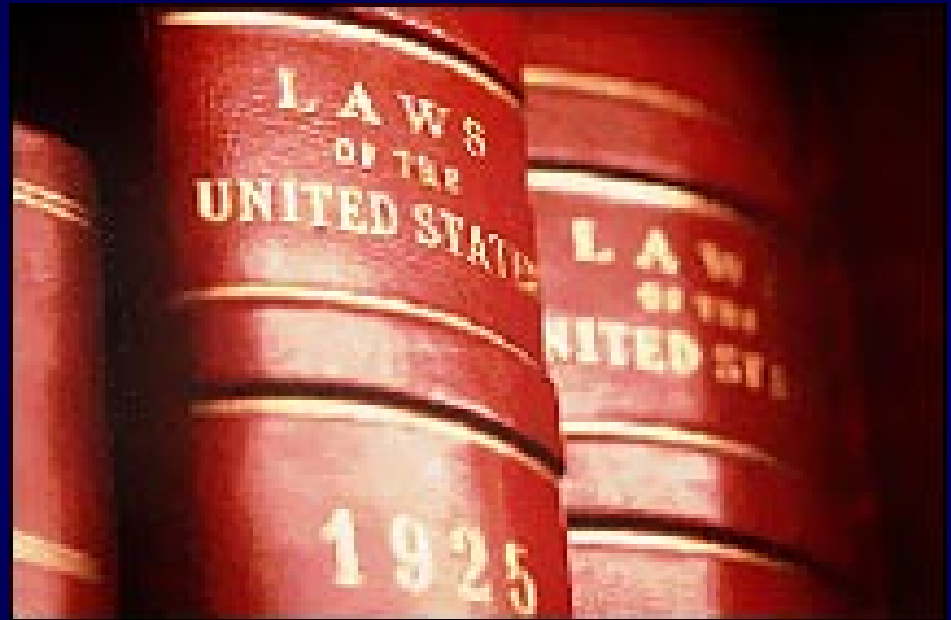
Next Segment

What powers may be implicated in the management and use of private and other property during public health emergencies?



End: Unit 3

For additional information on public health law visit the *CDC Public Health Law Program*



www.cdc.gov/phlp

