Quarantine and Isolation Law: The Basics

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Social Distancing Measures Used to Quench Epidemics

- Non-pharmaceutical interventions
  - “Snow day” restrictions (e.g., shelter-in-place)
  - Close schools, daycare centers
  - Cancel large public gatherings (e.g., concerts, theaters)
  - Limit other public contacts (e.g., markets, public transit)
  - Encourage selected / non-essential workers to stay home
  - Implement telecommuting to minimize economic impact
Isolation and Quarantine

- “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 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.”
Quarantine Objective:
Reduce Transmission of Disease

- Effectiveness depends on
  - Time period between exposure and onset of communicability
  - Mode of transmission
  - Actual distance of separation required
  - Treatment options
  - Options for isolating patients when in communicable state
Federal Quarantine/Isolation

- "Qualifying Disease listed in Exec. Order
  - cholera, diphtheria, infectious TB, plague, smallpox, yellow fever, viral hemorrhagic fevers (Ebloa), SARS, and pandemic influenza
- Two separate reg parts: Part 70 = domestic interstate quarantine and Part 71 = travelers seeking entry
- Court Order not necessary
Quarantine and Isolation: Constitutional Requirements

- Quarantine and isolation restrict individual liberty
  - Similar to criminal arrest or civil commitment

- U.S. Constitution, 5th and 14th Amendments
  - 5th Due Process Clause: “nor be deprived of life, liberty, or property, without due process of law”
  - 14th Amendment makes “due process” applicable to states

- Basic Due Process for quarantine and isolation
  - Right to notice
  - Right to counsel at certain stages
  - Right to hearing on request
  - Reasonable belief for detention
Federal Quarantine/Isolation
Domestic

Current Regulations

- Somewhat Vague
- CDC acts when Interstate or local control inadequate
- Impose travel permits
- Require interstate travelers to report to local PH Dept.
- Order quarantine, isolation to prevent disease spread
- No express due process provisions
Federal Quarantine/Isolation
Domestic

Proposed Regulations

- Adds definitions, same disease list, same Interstate
- Disease must be at “qualifying stage”
  - Precommunicable but likely to cause PH emergency or communicable
- “Provisional quarantine” up to 3 days
  - Hearing after 3 days with hearing officer, no right to lawyer
- Quarantine - duration based on incubation & communicability periods
  - Habeas petition, counsel attaches, admin exhaustion
- Forced medical exams, treatment
Quarantine and Isolation Hearings: Typical Procedural Requirements

- Quarantine / isolation administrative order
- Supporting affidavits and factual findings
- Notice and explanation of due process procedures
- Service of process (likely by law enforcement officers, not private process servers)
- Opportunity to challenge factual basis:
  - Arrange for appearances at hearing
  - Possible telephonic / electronic hearings
- Right to representation
Legal Readiness: Hearings

- Recognized need: systems for large number of hearing requests in event of mass quarantine
  - Service of process
  - Court-appointed counsel if habeas
- In-person vs. electronic / telephonic hearings
  - United States v. Crawford
  - Protecting hearing officers, courts and participants
- Documentation and affidavits
- Ancillary legal challenges
  - Business disruption, TROs, injunctions
Hearings and Modern Isolation Procedures Can Be Rigorous

Confinement for Treatment:

- **Best v. Bellevue Hospital, New York (2004)**
  - Non-infectious TB patient confined when sought to leave hospital and refused to cooperate with treatment
  - Filed suit against health department and hospitals
    - Was Mr. Best dangerous to himself and community?
    - Did Mr. Best have adequate right to hearing?
  - Health department prevailed
    - But only after 4 hearings and 7 administrative and state and federal judicial orders over 2 years
Quarantine and Isolation Hearings: Appeal Variations & *Habeas Corpus*

- In some states, health departments issue administrative quarantine orders and state courts handle any appeals.
- Some states have an administrative appeal mechanism that must first be exhausted before an individual can seek judicial review.
- Individuals have a constitutional right to challenge their detention through a *habeas corpus* petition before a federal court after other appeals have been exhausted.
Quarantine and Isolation: Obligations to Those Confined

- Basic needs
  - Food, medical care, safety and sanitary needs
  - Separation of isolated from quarantined persons
  - Medical treatment during confinement
  - Habitable accommodation
  - Protection from known threats

- Religious and dietary considerations
Constitutional Requirement for Least Restrictive Means

- Courts tend to favor the principle of detention “by least restrictive means necessary” when applied to individual freedom in quarantine situations
  - Analogous to principles underlying Directly Observed Therapy (DOT) for TB cases
  - Includes possible confinement in individual’s residence or other public or private premises

- Some states may require least restrictive means
- Public health must also protect the community in an emergency
State and Local Jurisdictional Issues Regarding Protection of People

- Remember: Police powers, including public health authority, are reserved to states under the U.S. Constitution's 10th Amendment

- But: federal and international jurisdictional issues may arise in a given case
Federal Jurisdictional Issues

- Current federal statute (PHS Act Sec. 361) was enacted in an era when immigrants arrived by sea.
  - Designed to control international importation and interstate spread of certain diseases.
  - Not designed to prevent infectious persons bound for other countries from leaving U.S.

- Requires that specific quarantinable diseases be listed in a Presidential Executive Order.
Federal Powers:
Quarantine and Isolation

- The Secretary of HHS (through CDC) can:
  - “detain, medically examine, or conditionally release” persons suspected of carrying certain communicable diseases

- Authority applies only if communicable disease has been designated in a Presidential Executive Order
  - SARS added 2003
  - Avian influenza added 2005
Scope of Federal Quarantine Power

- Interstate / International - persons entering:
  - Into the U.S. or possessions from foreign countries
  - 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 are inadequate to control spread of disease
    - Close coordination between state and CDC is critical
Federal Quarantine: Enforcement Flexibility

- Sec. 311 of PHS Act: HHS authorized to accept state and local assistance in enforcing federal quarantine order
- Also, HHS can assist states and political subdivisions in enforcing their quarantines
- U.S. military may assist enforcement of state quarantine at seaports

- Note: this is an exception to the normal prohibition on the use of military for domestic law enforcement
SARS Lessons from Canada

- Communications in Toronto “demystified” on quarantine
  - Hotlines staffed by 80 nurses received 300,000 calls
  - Community meetings were held
  - Information posted on websites in 14 languages

- Substantial “social cohesion” prevailed
  - Over 30,000 “voluntary” quarantines took place
  - Only 27 formal quarantine orders needed
    - The sole appeal was withdrawn
Lessons from Canada: Compliance

- Despite substantial voluntary compliance in Toronto during the 2003 SARS outbreak, important detracting factors were identified:
  - Lost wages or income of those quarantined
  - Groceries and essential services
  - Boredom of persons sheltering at home

- Good communication was an essential factor in encouraging voluntary compliance with the public health orders
International Health Regulations (IHR)

- Following 2003 SARS, the World Health Organization (WHO) revised the International Health Regulations

- IHR contain operational definition of a "public health emergency of international concern" that triggers increased control responsibilities for nations
International Health Regulations (IHR)

- The WHO has no free-standing international quarantine authority
  - Quarantine is still a country-by-country power

- The revised IHR preserve the important WHO roles of collecting international outbreak information from various sources and of issuing “traveler advisories” when appropriate