



A Legislator's Guide to Federal Law Pertaining to Isolation and Quarantine

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Introduction

Communicable diseases pose significant threats to public health and well-being. The federal government may act to prevent the entry of communicable diseases into the United States and its territories and can also take measures to prevent the spread of communicable diseases between states. The most significant federal powers include the ability to isolate and quarantine persons infected, suspected to be infected, exposed, or suspected to be exposed to communicable diseases. Large-scale isolation and quarantine were last enforced during the 1918 influenza pandemic. Only a few public health events have prompted federal isolation or quarantine orders in recent history (cdc.gov, Legal Authorities for Isolation and Quarantine [last reviewed: Feb. 24, 2020]). This Legislator's Guide explains the current statutory duties and authorities of the federal government to protect public health from communicable diseases and the authority to isolate and quarantine persons who are infected, might be infected, or could potentially become infected with communicable diseases.

Overview of the Powers and Duties of the Federal Government Related to Isolation and Quarantine

The federal government's authority for isolation and quarantine comes from the Commerce Clause of the Constitution of the United States, which provides that Congress has the power "[t]o regulate Commerce with foreign Nations, and among the several States" (U.S. Const. art. I, § 8, cl. 3). Thus, congressional power for isolation and quarantine plainly applies at the U.S. border and to people traveling across state and territory lines. Under this Commerce Clause authority, Congress passed the Public Health Service Act in 1944, which gave the executive branch power to enforce quarantines. Federal isolation and quarantine are authorized by executive order of the President, and the President can revise the list of communicable diseases subject to federal isolation and quarantine by executive order (Exec. Order No. 13295; 42 U.S.C. § 264(b)).

The Secretary (the Secretary) of the U.S. Department of Health and Human Services (HHS) is authorized to take measures to prevent the entry and spread of communicable diseases from foreign countries into the United States and between states under section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. § 264). This authority is delegated to the Centers for Disease Control and Prevention (the CDC), which carries out these functions on a day-to-day basis. The CDC derives its powers under Parts 70 and 71 of Title 42 of the Code of Federal Regulations, including the power to detain, medically examine, and release persons suspected of carrying a communicable disease arriving into the United States and traveling between states. "Communicable diseases" are defined as "illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from

an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment" (42 C.F.R. § 70.1).

States play a strong role in addressing communicable diseases and have the power to make and enforce isolation and quarantine decisions affecting movement within their borders. This authority comes from states' powers to establish laws protecting the health, safety, and welfare of the public, also known as police powers derived from the Tenth Amendment of the U.S. Constitution. Tribes also have police powers. Federal, state, local, and tribal health authorities can simultaneously have in place and utilize separate legal quarantine power. However, when state or local laws are in conflict with a federal law, federal law will prevail under the Supremacy Clause of the U.S. Constitution (U.S. Const. art. VI, cl. 2). The federal government may accept state and local assistance in enforcing federal quarantine and may assist state and local authorities in preventing the spread of communicable diseases under section 311 of the PHS Act (42 U.S.C. § 243).

Public Health Service Act

The Secretary of HHS is authorized to make and enforce regulations "necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession" (42 U.S.C. § 264(a)). The statute authorizes other public health measures, such as inspection and destruction of animals or articles found to be sources of communicable disease (42 U.S.C. § 264(a)). The statute provides that, under the regulations prescribed, the Secretary shall have the authority to apprehend, detain, or conditionally release individuals only for the purpose of preventing the introduction, transmission, or spread of communicable diseases published in an executive order issued by the President (42 U.S.C. § 264(b)). Generally, such regulations shall only be applicable to people coming into a state or possession from a foreign country or a possession (42 U.S.C. § 264(c)).

The statute originally conferred authority on the Surgeon General, but all statutory powers and functions of the Surgeon General were transferred to the Secretary of Health, Education, and Welfare (now the Secretary of HHS) under Reorganization Plan No. 3 of 1966. In 2000, the Secretary transferred certain authority related to persons, such as quarantine authority, to the Director of the CDC.

The statute allows for the apprehension and examination of "any individual reasonably believed to be infected with a communicable disease in a qualifying stage and believed (A) to be moving or about to move from a State to another State; or (B) to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a State to another State" (42 U.S.C. § 264(d)). The PHS Act defines "qualifying stage" as a disease that is in a communicable stage or is in a precommunicable stage if the disease would likely cause a public health emergency if transmitted to other individuals (42 U.S.C. § 264(d)). A "communicable stage" is defined as "the stage during which an infectious agent may be transmitted either directly or indirectly from an infected individual to another individual." A "precommunicable stage" is defined as "the stage beginning upon an individual's earliest opportunity for exposure to an infectious agent and ending upon the individual entering or reentering the communicable stage of the disease or, if the individual does not enter the communicable stage, the latest date at which the individual could reasonably be expected to have the potential to enter or reenter the communicable stage" (42 C.F.R. § 70.1).



§ 264(e) provides that the PHS Act and regulations promulgated pursuant to it are not to be construed as superseding any state law except to the extent that such state provisions conflict with federal authority under §§ 264 and 266 of the PHS Act. The statute authorizes the Secretary to prohibit the introduction into the United States of individuals and property from foreign countries when he determines that there is a serious danger of the introduction into the United States of a communicable disease and that suspending the right to introduce such people and property is required in the interest of public health (42 U.S.C. § 265). During times of war, the power to apprehend and examine individuals applies to persons "reasonably believed (1) to be infected with such disease and (2) to be a probable source of infection to members of the armed forces of the United States or to individuals engaged in the production or transportation of . . . supplies for the armed forces" (42 U.S.C. § 266).

The PHS Act directs consular and medical officers stationed at ports or places of entry to make reports of the health conditions at such port or place of entry. The U.S. Department of Homeland Security (DHS) and three agencies within it, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the U.S. Coast Guard, are authorized to assist in "the enforcement of quarantine rules and regulations" (42 U.S.C. § 268; 2005 Memorandum of Understanding Between HHS and DHS). The CDC may also work with other federal, state, and local law enforcement agencies. There are quarantine stations operated by the CDC at 20 ports of entry. These stations are staffed by medical and public health officers from the CDC who decide whether ill persons can enter the United States and what measures should be taken to prevent the spread of contagious diseases (cdc.gov, U.S. Quarantine Stations [last reviewed: Sept. 29, 2017]).

42 U.S.C. § 249 authorizes the Public Health Service (the PHS) to care for and treat individuals under quarantine and permits individuals to receive such care and treatment at the expense of the PHS from public or private medical facilities when authorized by the officer in charge of the PHS station. 42 U.S.C. § 271 prescribes criminal sanctions for violations of federal regulations issued under section 361 of the PHS Act.

Centers for Disease Control and Prevention

Regulations promulgated under the PHS Act are located in Parts 70 and 71 of Title 42 of the Code of Federal Regulations. Part 70 applies to Interstate Quarantine and Part 71 applies to Foreign Quarantine. These implementing regulations permit the quarantine and isolation of individuals in order to address and prevent the spread of diseases identified in Executive Order 13295. Both parts define "isolation" as "the separation of an individual or group reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease" and define "quarantine" as "the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who are not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease."

As discussed above, the Secretary of HHS transferred his quarantine authority to the Director of the CDC (the Director) in 2000. The CDC's Division of Global Migration and Quarantine executes interstate and foreign quarantine measures. Among other duties, the Division of Global Migration and Quarantine's responsibilities include (i) operating quarantine stations at ports of entry; (ii) establishing standards for medical examination of persons destined for the United States; and (iii) administering interstate and foreign quarantine regulations that govern



international and interstate movement of persons, animals, and cargo (cdc.gov, Division of Global Migration and Quarantine (DGMQ) [last reviewed: Nov. 1, 2019]). Pilots of both interstate flights and flights into the United States (in addition to other "vessels," defined as any passenger-carrying, cargo, or towing vessel, with some exclusions) are required to report certain illnesses they encounter during flight in advance of their arrival into the U.S. to the CDC quarantine station closest to the destination airport (42 C.F.R. §§ 70.6 and 71.21(b)).

Interstate Travel

The Director of the CDC is authorized to take measures that he deems reasonably necessary to prevent the spread of any communicable diseases whenever he determines that the measures taken by health authorities of any state or U.S. territory (including political subdivisions thereof) are insufficient to stop the spread of communicable diseases from such state or possessions to any other state or possession (42 C.F.R. § 70.2). The regulations prohibit infected persons from traveling from one state to another without a permit from the health officer of the state, possession, or locality of destination, if such a permit is required under the law applicable to the place of destination (42 C.F.R. § 70.3).

There are various provisions related to requirements for interstate travelers under a federal order of isolation, quarantine, or conditional release. "Conditional release" is defined as "the temporary supervision by a public health official (or designee) of an individual or group, who may have been exposed to a quarantinable communicable disease to determine the risk of disease spread and includes public health supervision through in-person visits, telephone, or electronic or Internet-based monitoring" (42 C.F.R. § 70.1). Except as provided under the terms of a federal conditional release order, no individual is permitted to travel in interstate traffic from one state or U.S. territory to another without a written travel permit issued by the Director while under a federal order of isolation, quarantine, or conditional release (42 C.F.R. § 70.5(a)(1)). Requests for travel permits must include the reasons why the travel is being requested and the precautions to be taken to prevent the potential transmission or spread of the communicable disease, among other information (42 C.F.R. §§ 70.5(a)(2) and (a)(3)). The Director shall respond to a request for a permit within five business days, and an individual who receives such a permit shall retain it in his possession throughout the course of travel and comply with all of the prescribed conditions (42 C.F.R. §§ 70.5(a)(3) and (a)(4)).

An individual who has a request for a permit denied or has a travel permit suspended or revoked may submit a written appeal to the Director, excluding the CDC official who denied, suspended, or revoked the permit (42 C.F.R. § 70.5(a)(5)). The regulations also put mandates on operators of any conveyances, including pilots, on accepting and checking for such permits (42 C.F.R. § 70.5(b)). The Director may apply any of these provisions to individuals traveling entirely intrastate upon the request of state or local health authorities or whenever the Director makes a determination that, based on inadequate local control, such measures are needed to prevent the spread of disease from such state or territory to any other state or territory (42 C.F.R. §§ 70.5(d) and (e)). The Director may also act pursuant to these provisions when individuals are under a state or local order, or written agreement, for quarantine, isolation, or conditional release upon the request of the state or local authority, or whenever the Director makes a determination of inadequate local control (42 C.F.R. § 70.5(f)).

The Director may authorize the apprehension, medical examination, quarantine, isolation, or conditional release of any individual in order to prevent the introduction, transmission, or spread



of quarantinable diseases determined by executive order. Such authorizations may occur upon a finding that the individual is reasonably believed to be infected with a quarantinable communicable disease in a qualifying stage and is moving or about to move from a state to another state or based on a reasonable belief that the individual constitutes a probable source of infection to others who may be moving from a state into another state (42 C.F.R. § 70.6). The regulations direct the Director to arrange for adequate food and water, appropriate accommodation and medical treatment, and means of necessary communication for those who are apprehended or held in such an order (42 C.F.R. § 70.6).

The Director may conduct public health prevention measures at locations where individuals may gather to engage in interstate travel, such as U.S. airports and railway stations, through noninvasive procedures to detect the presence of communicable diseases (42 C.F.R. § 70.10). These measures may require individuals to provide contact information and information concerning their intended destination, health status, known or possible exposure history, and travel history (42 C.F.R. § 70.10). The regulations require pilots in command of an aircraft conducting a commercial passenger flight in interstate traffic under a regular schedule to report as soon as practicable any deaths or presence of ill persons on the flight and take any measures directed by the Director to prevent the potential spread of the disease (42 C.F.R. § 70.11). The Director may establish vaccination clinics authorized to administer vaccines and/or other prophylaxis (42 C.F.R. § 70.9).

Foreign Quarantine

Part 71 of Title 42 of the Code of Federal Regulations contains the regulations to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. An airline with a flight arriving into the United States, including any intermediate stops, shall make certain data elements available to the Director for passengers or crew who, as determined by the Director, may be at risk of exposure to a communicable disease, within 24 hours of such an order by the Director. Such data elements include name and address in the United States (42 C.F.R. § 71.4). Upon an order from the Director, the airline shall also provide data elements on passengers or crew who may be at risk of exposure to a communicable disease for the purpose of public health follow-up (42 C.F.R. § 71.4(b)). The operator of any vessel carrying 13 or more passengers (excluding crew), and which is not a ferry, shall also make data elements available to the Director for passengers or crew who may be at risk of exposure to a communicable disease as determined by the Director within 24 hours of such request (42 C.F.R. § 71.5). This request is made only after the CDC has determined the presence of a confirmed or suspected case of a communicable disease on board an aircraft or ship (cdc.gov, CDC Report as Required by the 2017 Control of Communicable Diseases Final Rule [last reviewed: Feb. 6, 2019]).

The Director may conduct public health prevention measures at U.S. ports of entry or other locations through noninvasive procedures to detect the potential presence of communicable diseases, and he may require individuals to provide contact information, health information, travel history, and other information (42 C.F.R. § 71.20). A carrier that arrives at a U.S. port will not undergo inspection unless the Director determines that a failure to inspect will present a threat of introduction of communicable diseases into the U.S. However, carriers not subject to such an inspection are subject to sanitary inspection to determine whether there are rodent, insect, or other vermin infestation; contaminated food or water; or other insanitary conditions requiring measures for the prevention of the introduction, transmission, or spread of



communicable disease (42 C.F.R. § 71.41). The Director may require detention of a carrier until the completion of the measures (42 C.F.R. § 71.31).

Whenever the Director has reason to believe that any arriving person is infected with or has been exposed to any communicable disease listed in an executive order, he may isolate, quarantine, or place the person under surveillance and may order disinfection or disinfestation and fumigation, as considered necessary to prevent the introduction, transmission, or spread of the disease. Whenever the Director has reason to believe that any arriving carrier or article or thing on board the carrier is or may be infected or contaminated with a communicable disease, he may require the same necessary measures for the carrier, article, or thing (42 C.F.R. § 71.32). The regulations direct the Director to arrange for adequate food and water, appropriate accommodation, appropriate medical treatment, and means of necessary communication for individuals apprehended or held in isolation and quarantine (42 C.F.R. § 71.33(a)). The Director is authorized to require isolation where surveillance is authorized whenever he considers the risk of transmission to be exceptionally serious (42 C.F.R. § 71.33(b)). Carriers belonging to or operated by the U.S. military services may be exempted from inspection if the Director believes that they have complied with military service regulations (42 C.F.R. § 71.34).

The Director may prohibit the introduction into the United States of individuals from designated foreign countries (or one or more political subdivisions thereof) or places for a period of time that the Director deems necessary for public health (42 C.F.R. § 71.40(a)). The prohibition shall occur when the Director issues an order in which he determines that:

- (1) By reason of the existence of any communicable disease in a foreign country (or one or more political subdivisions or regions thereof) or place there is serious danger of the introduction of such communicable disease into the United States; and
- (2) This danger is so increased by the introduction of persons from such country (or one or more political subdivisions or regions thereof) or place that a suspension of the introduction of such persons into the United States is required in the interest of public health (42 C.F.R. § 71.40(a)).

In any order issued, the Director shall designate the foreign countries, subdivisions, regions, or places; the period of time or circumstances under which the introduction of any individuals or class of persons into the U.S. shall be suspended; and the conditions under which that prohibition on introduction shall be effective, including any relevant exceptions (42 C.F.R. § 71.40(c)).

The Director may enforce various requirements for sanitary inspections and other requirements upon arrival at U.S. ports. For example, the Director may require an air carrier or pilot in command to disinsect an aircraft if it has left a foreign area that is infected with insect-borne communicable disease and the aircraft is suspected of harboring such insects (42 C.F.R. § 71.44(a)). Regulations on importations, such as those of animals and dead bodies, can be found in Subpart F of Part 71. The Director may suspend entry of animals, articles, or things from designated foreign countries or places whenever he determines that such an action is necessary to protect public health and:

- (1) There exists in a foreign country (including one or more political subdivisions and regions thereof) or place a



communicable disease the introduction, transmission, or spread of which would threaten public health of the United States; and

(2) The entry of imports from that country or place increases the risk that the communicable disease may be introduced, transmitted, or spread into the United States (42 C.F.R. § 71.63).

Medical Examinations

Under Parts 70 and 71 of Title 42 of the Code of Federal Regulations, when the Director requires an individual to undergo a medical examination as part of a federal order for quarantine, isolation, or conditional release, the Director shall promptly arrange for the examination to be conducted and advise the individual that the examination shall be conducted by an authorized and licensed health worker, and with prior informed consent (42 C.F.R. §§ 70.12 and 71.36). The Director may require an individual to provide information and undergo testing that may be reasonably necessary to diagnose or confirm the presence or extent of infection. If individuals are reasonably believed to be infected based on the results, they may be isolated, or if the results are inconclusive or unavailable, individuals may be quarantined or conditionally released (42 C.F.R. §§ 70.12 and 71.36). The Director may authorize payment for the care and treatment of individuals subject to medical examination, quarantine, isolation, and conditional release, subject to regulations set out in §§ 70.13 and 71.30.

A federal order authorizing quarantine, isolation, or conditional release shall be in writing, signed by the Director, and include the following information: (i) the identity of the individual or group subject to the order; (ii) the location of the quarantine or isolation or the entity to whom and means by which the individual shall report for public health supervision in the case of conditional release; (iii) an explanation of the factual basis supporting the Director's reasonable belief that the individual is in the qualifying stage of a quarantinable communicable disease; (iv) an explanation that the federal order will be reassessed no later than 72 hours after it is served and an explanation of the medical review of the order; (v) an explanation of the criminal penalties for violating the order; and (vi) an explanation that if a medical examination is required, the examination shall be conducted by an authorized and licensed health worker, and with prior informed consent (42 C.F.R. §§ 70.14 and 71.37). Part 70 also requires that the order include an explanation of the factual basis supporting the Director's reasonable belief that the individual is moving or about to move between states or constitutes a probable source of infection to those who may be moving from one state to another state (42 C.F.R. § 70.14(a)(4)). A federal order authorizing quarantine, isolation, or conditional release shall be served on the individual no later than 72 hours after he has been apprehended, except that the order can be published or posted in a conspicuous location if the order is applicable to a group of individuals and individual service would be impracticable (42 C.F.R. §§ 70.14(b) and 71.37(b)).

The Director, but excluding the CDC official who issued the order, shall reassess the need to continue the quarantine, isolation, or conditional release of an individual no later than 72 hours after the service of the order (42 C.F.R. §§ 70.15 and 71.38). As part of the reassessment, the Director, excluding the CDC official who issued the order, shall consider and determine whether less restrictive alternatives would adequately serve to protect public health, in addition to other relevant new information such as travel records (42 C.F.R. §§ 70.15 and 71.38). When he completes the reassessment, the Director shall promptly issue and serve a written federal order



directing that the quarantine, isolation, or conditional release be continued, modified, or rescinded (42 C.F.R. §§ 70.15(d) and 71.38(d)).

Upon a continuation or modification of a federal order for quarantine, isolation, or conditional release, an individual may request a medical review. Such request may only occur after the Director's mandatory reassessment and following the service of a federal order continuing or modifying the previous order. The Director shall arrange the requested medical review as soon as reasonably practicable (42 C.F.R. §§ 70.16 and 71.39). The purpose of the medical review shall be to ascertain whether the Director has a reasonable belief that the individual is infected with a quarantinable communicable disease in a qualifying stage. The individual may authorize an advocate at his own expense to submit medical or other evidence, and in the medical reviewer's discretion, be permitted to present a reasonable number of medical experts. The Director shall appoint representatives at government expense when the individual is indigent (42 C.F.R. §§ 70.16(f) and 71.39(f)). At the conclusion of the review, the medical reviewer shall issue a written report to the Director making a determination as to whether the order should be rescinded, continued, or modified and whether less restrictive alternatives would be adequate (42 C.F.R. §§ 70.16(l) and 71.39(l)).

After reviewing the report and any objections by the individual or his advocate, the Director shall make a determination on the order. When the Director continues or modifies the order, the order shall include a statement that the individual may request that the Director rescind the order but based only on a showing of significant, new, or changed facts or medical evidence that raise a genuine issue as to whether the individual should continue to be subjected to such federal orders (42 C.F.R. §§ 70.16(m) and 71.39(m)). The Director may consolidate one or more medical reviews if the number of individuals or other factors makes the holding of individual medical reviews impracticable (42 C.F.R. §§ 70.16(o) and 71.39(o)). An individual subject to a federal public health order shall be served with a copy of his administrative record in its entirety upon request (42 C.F.R. § 70.17 and 71.29).

Violation of a federal quarantine or isolation order is a criminal misdemeanor, and individuals may be subject to a fine of up to \$100,000 or one year in jail, or both, if the violation does not result in a death. If the violation results in a death, the maximum fine is \$250,000 or one year in jail, or both, for individuals. Organizational violations may be subject to fines of up to \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death (42 C.F.R. §§ 70.18 and 71.2).

Do Not Board List

There are other mechanisms that the CDC has developed to prevent the spread of communicable diseases. The CDC and DHS developed the public health Do Not Board list, which allows domestic and international health officials to request that persons with communicable diseases who pose a serious threat to the public be restricted from boarding commercial aircraft departing from or arriving into the U.S. (cdc.gov, FAQs for Public Health Do Not Board and Lookout Lists [last reviewed: May 16, 2019]). Sick travelers are also placed on a Lookout list so they will be detected if they attempt to enter the United States by land or sea (cdc.gov, Travel Restrictions to Prevent the Spread of Disease [last reviewed: May 12, 2020]). The criteria for adding individuals to these lists are that an individual is



Known or believed to be infectious with, or at risk for, a serious contagious disease that poses a public health threat to others during travel; **and** any of the following three:

- a. **Not** aware of diagnosis or **not** following public health recommendations; **or**
- b. Likely to travel on a commercial flight involving the United States or travel internationally by any means; **or**
- c. Need to issue travel restriction to respond to a public health outbreak or to help enforce a public health order (cdc.gov, Travel Restrictions to Prevent the Spread of Disease [last reviewed: May 12, 2020]).

Once a person is placed on these lists, airlines will not issue a boarding pass to the person for any commercial flight within, arriving to, or departing from the United States. Once public health authorities confirm that a person is no longer contagious, the person must be removed from the lists typically within 24 hours. The CDC also reviews the records of all persons on the lists every two weeks to determine if they are eligible for removal.

Conclusion

The federal government's isolation and quarantine powers are important for the protection of public health during an emergency. The federal government's powers most notably pertain to protecting United States borders and preventing the transmission of diseases between states. However, the federal government can step in to act intrastate or to assist states upon the request of state or local health authorities or whenever the Director makes a determination that, based on inadequate local control, such measures are reasonably necessary to prevent the spread of disease from such state or territory to any other state or territory. This Legislator's Guide is intended to provide a basic overview of the statutes and regulations governing isolation and quarantine in the United States.

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