
Emergency Powers I: Protection of People

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Objectives

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

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

Emergency Public Health Powers Available for Mandatory Isolation/Quarantine

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Key Definitions

- “Isolation” means the physical separation and confinement of an individual, group of individuals or individuals present within a geographic area who are infected with a communicable disease or are contaminated, or whom the commissioner “reasonably believes” to be infected.
- “Quarantine” the same as isolation except that it is an exposure not infected.

Conditions and Principles

- Least restrictive means
- Separation of those quarantined from those isolated
- Monitored
- Prompt movement of those infected to isolation from quarantine
- Release upon first opportunity

Conditions and Principles

- The needs of individuals addressed in a systematic and competent fashion
- Premises maintained in a safe and hygienic manner
- To extent possible families together
- To the extent possible cultural and religious beliefs considered

Who can order a quarantine or isolation?

- Under PHERA, the Governor may authorize the DPH Commissioner to order a quarantine or isolation.
- The Commissioner may, in turn, delegate to a DPH employee or local health director, as much of his authority as he deems appropriate.
- When the Commissioner delegates his authority, the delegatee then acts as an agent of the Commissioner. CGS §19a-131a.

Local Director of Health Authority

- Section 12 of the act rewrites 19a-221 and basically includes the same provisions that are applicable to a public health emergency.
- Under section 12(a) on the occasion of a declaration “each...director of health shall comply with and carry out any order the Commissioner of Public Health issues in furtherance of the Governor’s order...”

For how long is an order effective?

- Quarantine and isolation orders are effective for no more than 20 days for each period of quarantine or isolation, unless the DPH Commissioner issues another order before the first order ends. CGS §19a-131b(c).

How is the length of the quarantine or isolation order determined?

- The length of a quarantine or isolation is based on the length of incubation of the disease or contamination, the date of the exposure, and the medical risk of exposing others, to the extent known.
- DPH will provide expert advice as to the length of quarantines and isolation orders. CGS §19a-131b(c).

Terms of the Order

- Each order must be in writing
- The name of the individual or the area described
- The basis for the commissioner's belief
- The period of time the order shall remain effective
- The premises subject to quarantine or isolation
- Other terms as may be necessary

Notice

- Right to counsel
- Right to a hearing
- Right to be represented at the hearing by counsel and if unable to pay the state will provide one
- Service – a copy of the order shall be provided to each individual or if not possible notice by best means likely to reach those affected.

Appeal to the Probate Court

- Any person subject to an order may take an appeal. It must be in writing.
- Hearing within 72 hours after receipt of the request.
- If the person cannot appear personally the hearing can only proceed if her or his representative is present.
- Commissioner shall be a party to the proceeding.
- Appeal does not stay the order.

Records

- Both the respondent and the commissioner shall be able to access all relevant records including hospital records prior to the hearing relating to the condition of the person and all the records shall be admissible.
- Testimony taken at the hearing shall be recorded and a transcript prepared if an appeal taken.

Burden of Proof

- The Commissioner shall have the burden of showing by a preponderance of the evidence, that the conditions of the subsection are met which are:
 - ❑ Respondent is infected or contaminated, or is reasonably believed to be exposed to disease or contaminated, or is at reasonable risk of having disease or being contaminated.
 - ❑ Poses a reasonable threat to the public health
 - ❑ Quarantine or isolation is necessary
 - ❑ The least restrictive alternative has been employed

Probate Court Options

- Shall order (1) continued quarantine or isolation under such terms and conditions the court deems necessary to prevent the exposure to others or
- (2) the release of the respondent under such terms as it deems appropriate.
- If the conditions for an order not found, then the respondent is released.

Periodic review/ Appeal

- Respondent has the right to request a review of the order not more than every thirty days and the probate Court has the ability on its own motion to do the same. After hearing the court may modify its order as appropriate in light of any changed conditions.
- Any person subject to an order may take an appeal to the Superior Court. The Appeal is confined to the record before the Probate Court.

What happens if an individual violates an order issued under PHERA?

- Any one who violates an order issued under PHERA or who obstructs, resists, hinders or endangers any person carrying out the provisions of an order.
- Subject to a fine of up to \$1,000 and/or imprisonment up to one year. CGS §19a-131a(d).

What happens if an individual refuses to obey a quarantine or isolation order?

- The DPH Commissioner or his designee may direct law enforcement officials to place immediately such individual into custody and place him or her into quarantine or isolation. CGS §19a-131c.

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

Medical Countermeasures

- Drug, biological product, or device
 - A. Treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or
 - B. Treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device that is used as described in subparagraph (A).

I HAVE
VACCINE



Who has the authority to order vaccinations?

- In the event of a public health emergency declared by the Governor, the Governor may authorize the DPH Commissioner to issue an order for the vaccination of such persons in a geographic area as the DPH Commissioner deems reasonable and necessary to prevent the introduction or arrest the progress of a communicable disease or contamination that causes the emergency. CGS §19a-131e(a).

Vaccination Orders

- Section 6 provides the authority for orders to vaccinate. The same basic due process provisions that govern the orders of quarantine and isolation apply.
- The individual has the option to refuse the vaccination but then may be subject to orders of quarantine or isolation if they refuse but only upon a showing that the individual is infected or has been exposed.

Is it necessary to obtain a written consent prior to administering a vaccination?

- Yes.
- Under PHERA, no individual can be vaccinated without his or her written consent (or, in the case of a minor, the legal guardian's written consent); and persons may refuse to consent to a vaccination. CGS §19a-131e(a).

Who is authorized to administer vaccinations?

- The DPH Commissioner may authorize any qualified person, including, but not limited to, providers licensed to administer medication, and dentists, veterinarians, and paramedics.
- Such authorization shall be in writing and identify the categories of qualified persons included in the authorization, additional training required before they may administer vaccinations, and the duration of the authorization.

Can a LHD, acting as the Commissioner's agent, order a hospital to continue to treat an infected individual who is soon to be discharged, even if the person has no insurance?

- The Commissioner may order, and the LHD may implement, a directive to keep the infected person in a hospital's care until isolation or quarantine is no longer necessary. CGS §19a-131b(e).

Principles for the exercise of public health powers

- Necessity – Attempt to control risk. To the extent possible to achieve public health objective
- Effective Means – the means adopted are reasonably likely to achieve the public health objective
- Proportionality – the policy should be tailored to be the least restrictive alternative to reduce risk or ameliorate the harm, i.e. the least restrictive alternative

Principles for the exercise of public health powers

- Fairness – three basic characteristics:
 - Equity – applied even handedly to the relevant population
 - Procedural justice – due process, meaningful opportunity to correct mistakes
 - Transparency – implementation is a manner allowing public scrutiny and oversight.

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Legal and Ethical Issues: Special Problems in Protecting People in Public Health Emergencies

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Introduction

- Apply protections to standard interventions
- Legal and ethical dimensions
- Individual interests considered
- Special protection depends on specific legal source
- Benefit and risk analysis [proportionate] prevails
- Protection analysis works differently for each group

Objectives

1. Identify groups in community that need assistance and how to locate them in emergencies
2. Identify marginal people who may need special protection
3. Develop strategies for communicating risk
4. Identify legal problems

Objectives

5. Identify ethical concerns
6. Identify resources required to provide care in emergency
7. Develop working assumptions about groups needing protection
8. Develop specific strategies for assisting in emergencies by planning for each stage of emergency

CDC Categories

- **Economic disadvantage** – poverty, lack of income, insurance, resources, homeless, public benefits, women-headed household, size of family, poor living conditions
- **Limited language/communication proficiency** – education, literacy, minority status, undocumented immigrant: affects communicating, understanding, trust, decision making, ability to appreciate risk & follow directions

CDC Categories

- **Disability** – physically ill, mentally ill, severe disability, psychological resources, medically dependent: affects ability to move, comply with directions, requires special accommodations
- **Cultural/geographic isolation** – homeless, remote residence, undocumented immigrants, cultural or religious beliefs that affect care: affects identification, ability to follow directions, willingness to comply, trust, lack of mobility

CDC Categories

- **Age** – children, adolescents, elderly, otherwise incapable: affects understanding, trust, decision making capacity, ability to comply
- **Other** – legal disability (criminal behavior, addiction), institutionalized: affects identification, trust, willingness to comply, risk of losing marginal status, decision making capacity

Common Clusters

- Economic/cultural/geographic/language/age
- Economic/disability/age/isolation
- Economic/other/isolation

Important Legal/Ethical Challenges

- Essential public service workers
 - Procedures for priority access to examinations and treatments
 - Special duties on part of government
- Language
 - Many languages spoken
 - Language impacts communication, decision making and due process
- Religious objections and dietary restrictions
 - Protecting first amendment & equal protection rights while protecting public health

Important Legal/Ethical Challenges

- People who lack full adult capacity for decision making purposes
- ADA covered populations
 - Disabled (elderly, physically ill, mentally ill, sensory loss, immobile)
 - See Presidential executive order 13347 and ADA Guide for local governments

Important Legal/Ethical Challenges

- People exposed to criminal prosecution or other consequences as a result of public health intervention
- Law violators, drug addiction, illegal contraband, resistance or refusal to comply, duty to protect workers, reporting of undocumented immigrants, reporting infectious disease, housing or living violations

Important Legal/Ethical Challenges

- Confined populations and providers (inmates and wardens) -- special duties to people in care of the state
 - Medical treatment
 - Habitable accommodation
 - Protection from known threats

Important Legal/Ethical Challenges

- Individual hearings for restrictive measures/physical obstacles
- Quarantine/treatment plans must take into account individual differences of the population
- Provide food, medical care, shelter, safety and sanitary needs
 - How to provide services without danger to workers
 - How to provide for special needs of individuals while providing for many

Questions for Consideration

- What happens when legal duties and ethical duties conflict – or legal duties conflict with other legal duties?
- How should resources be allocated among people needing special protection and the general populations?
- How should prioritizing be done?

Questions for Consideration

- What about long term consequences for all these people and groups even if short term can be handled? Economic, social, legal...
- What about information gathered for PH purposes and its later accessibility and use for other purposes?

Summing up