

CDC Proposes New Rules to Deal with Communicable Disease, Including Quarantine

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Whether it is the media's perception of reality or reality itself, today's society is worried about a potential pandemic.¹ The recent worries might have started with the SARS epidemic, but infectious diseases have plagued civilization as long as civilization has existed. Yesterday we were worried about Monkey Pox, and today our concern is the Avian Flu. Regardless of the actual impact these particular diseases will have on our society, it is generally understood that current legislation would not suffice to allow the United States to cope with a large outbreak of infectious disease.

The Centers for Disease Control and Prevention ("CDC") has promulgated a proposed set of federal rules to help control a communicable disease outbreak.² *Jacobson v. Massachusetts*³ established the government's ability to protect the health, safety, and welfare of citizens through enacting measures to preserve public health. This is usually accomplished through state and local laws; however, the CDC's proposed rules govern public health on a national level.

The proposed rules recognize that an outbreak of communicable disease likely would not stay within state boundaries, and different state approaches to such an outbreak might not facilitate containing the outbreak. The Model State Emergency Health Powers Act ("MSEPHA") acts as a guide to state legislatures in modifying their archaic public health laws. This act, however, has not been adopted by every state, and not all states that have enacted the MSEPHA did so in its entirety. The proposed rules allow for the CDC to take control of matters where local and state governmental action is deemed inadequate. This is important to note because many states are not presently equipped with current legislation necessary to deal with an outbreak of epidemic proportions. For example, many states do not have specific laws to isolate individuals with communicable disease and must try to work within the current framework for civil commitment to reduce the risk of a potential outbreak.⁴

The proposed rules essentially modify existing rules and create new rules to allow for a more rapid response to an outbreak of infectious disease. These proposed rules include quarantining individuals who have been exposed to an infectious disease. Whenever governmental action includes imposing on the liberty of its citizens, constitutional issues arise.

¹ The terms "pandemic" and "epidemic" will not be used in this article interchangeably. "Pandemic" refers to communicable diseases that transcend international boundaries, affecting a large number of individuals. The term "epidemic" denotes a localized outbreak of communicable disease within a given area only.

² 42 CFR Parts 70 and 71 (2005).

³ 197 U.S. 11 (1905)

⁴ Isolation removes infected individuals from society, whereas civil commitment is a detention for treatment purposes. Often civil commitment laws deal with mental illness and are inadequate in dealing with infectious disease.

To quarantine individuals, the individuals in question must be exposed to diseases listed in the Executive Order of the President. This Order is limited in scope but does include diseases such as influenza caused by a novel agent and yellow fever.⁵ Assuming the process necessary to amend this order is an expedient process, new diseases could be added in such an order to allow the new rules to take effect in almost any situation; however, there is the possibility an amendment could occur after an epidemic was already underway, which would undermine the beneficial preventative measures the proposed rules seek to implement.

Regarding potential constitutional issues, questions of impermissible search and seizure are often an issue. Generally, quarantine has been held not to violate the Fourth Amendment as those traveling in and out of the country have a limited expectation of privacy and protecting citizens against an outbreak of a communicable disease far outweighs the search and seizure guarantees. In addition, the quarantine provisions of the new rules explicitly set out incubation time limits for known infectious diseases. Thus, it appears that the proposed rules seek to be as least restrictive as possible. Constitutional questions could arise for incubation periods of unknown diseases, though.

During the SARS epidemic, the CDC had an enormous problem contacting individuals they felt were exposed to the infectious disease. The new rules aim to locate individuals traveling via airplane after it has been discovered that there was exposure to a communicable disease. This is accomplished by requiring airlines and individuals making reservations for clients to obtain and store passenger information, including names, addresses, and telephone numbers. In the event that the individuals on an airline are later found to have been exposed to a communicable disease, the entities would then be required to release the passengers' stored information, allowing the CDC to locate these passengers and notify them they were exposed to the disease, thus helping control the spread of the disease. Those who violate the new rules would be subject to a fine of up to \$250,000 and could serve jail time.

Some say that the proposed rules for airlines fail to take into account other means of transportation such as buses and trains and thus will have limited effect in actually limiting potential exposure to communicable diseases. Millions of tourists visit the United States via tour buses throughout the course of the year. The provision for travel agents could apply to individuals booking their bus trips through such agents, but not everyone would be caught by this provision. Thus, the proposed rules may not reach far enough with regard to transportation. On the other hand, the provisions as they are may be very costly for those required to maintain the information on travelers.

Despite such possible costs, we must remember that an epidemic or pandemic would be costly on a national and global scope. I personally would rather be prepared for an outbreak than to not be able to contain communicable disease simply because of cost. In the long run we accomplish greater safety and economic savings than if we did nothing to

⁵ Exec. Order No. 13,375 (April 1, 2005), 70 Fed. Reg. 17299 (Apr. 5, 2005), *available at* <http://www.whitehouse.gov/news/releases/2005/04/20050401-6.html> (last visited May 6, 2006).

alleviate a potential outbreak. Lives, as well as costs, could be saved by the proposed rules.

The proposed rules are a step in the right direction for preparing our country for an outbreak of infectious disease. Obviously compliance with the proposed rules will come with time, and hopefully we have the time before the United States is subjected to an epidemic. Things are changing, public health laws are being updated, but only time will tell if they are adequate to protect our country.

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