



Overview

The preservation of the public health has historically been the responsibility of state and local governments. Clarity in leadership is crucial in a joint federal, state, and local response to any event which could cause harm to the public's health. The public health authority of the state derives from the police powers granted by their constitutions and reserved to them by the Tenth Amendment to the U.S. Constitution, whereas the basis for the federal governments' authority to prescribe a quarantine and other health measures is based on the Commerce Clause, which gives congress exclusive authority to regulate interstate and foreign commerce.

To be specific, a comprehensive public health response to avert the spread of highly contagious diseases may call for the isolation of persons and or quarantining of a community exposed to the infectious disease may become necessary. *Quarantine* typically refers to the “separation of individuals who have been exposed to an infection but are *not yet ill* from others who have not been exposed to the transmissible infection.”¹ In contrast, *isolation* refers to the “(s)eperation of infected individuals from those who are not infected.”² Primary quarantine authority typically resides with state health departments and health officials; however, the federal government has jurisdiction over interstate and foreign quarantine.

In addition, the federal government may assist with or take over the management of an intrastate incident if requested by a state or if the federal government determines local efforts are inadequate.³ Federal government leadership response roles are shared between the Department of Homeland Security (DHS) and agencies within the Department of Health and Human Services (HHS). Once a federal declaration of emergency has been issued, state law will be preempted to the extent that they conflict with federal law. The following information is intended to provide the major relevant legal federal authorities associated with preparedness and response.

Federal Government Authorities

Actionable Authorities	Federal Branch/ Department/ Agency	Citation	Authorities Granted
<i>Declaration of Emergency</i>	Executive	42 U.S.C. §§ 5121–5207	<ul style="list-style-type: none"> – The <i>Stafford Act</i> authorizes the President to declare a “major disaster” or “emergency” in response to an event (or threat) that overwhelms state or local governments. A declaration under the Act triggers access to federal technical, financial, logistical, and other assistance to state and local governments. – The Act directs the <i>Federal Emergency Management Agency (FEMA)</i> to coordinate administration of disaster relief to the states. – The governor of an affected state must first respond to the disaster and execute the state’s emergency plan before requesting that the President declare a major disaster or emergency, and the governor must certify that the magnitude of the emergency exceeds the state’s capability. – The President may declare an emergency without the request of a governor or tribal leader if the emergency involves “federal primary responsibility” (such as an event occurring on federal property, for example the bombing of the Murrah Federal Building in 1995). – Title VI of the Act provides for a national system for all-hazards emergency preparedness, with authority located at both the federal and state levels.
	Secretary of Health & Human Services	42 USC § 247d	<ul style="list-style-type: none"> – The <i>Public Health Service (PHS) Act</i> authorizes the HHS Secretary to determine that a public health emergency exists if <ol style="list-style-type: none"> 1) a disease or disorder presents a public health emergency; or 2) a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists. – From the determination of a public health emergency flows the ability of the Secretary to “take such action as may be appropriate” and to use funds from the <i>Public Health Emergency Fund</i> (when appropriated). – Duration: The public health emergency determination remains effective until the Secretary either declares that the emergency no longer exists, or at the expiration of 90 days, whichever occurs first. If the Secretary determines that the same or additional facts continue to warrant a public health emergency, he or she may renew the declaration for 90-day periods. – As amended by the <i>Pandemic and All-Hazards Preparedness Reauthorization Act of 2013</i>, also allows the Secretary, upon request by a governor or tribal organization, to authorize the temporary reassignment of state and local public health department or agency personnel funded in whole or in part through programs authorized under the PHS Act for the purpose of immediately addressing a federally declared public health emergency.
<i>Legal Authority without Declaration of a Public Health Emergency</i>	Secretary of Health & Human Service	42 USC §243	Even without the HHS Secretary declaring a public health emergency, the Secretary has broad legal authorities to provide assistance to states and local entities and to conduct studies.

<p><i>Deployment of the Public Health Service (PHS)</i></p>	<p>Executive 42 USC 6A Part A §217</p>	<p>Use of Service in time of war or emergency</p> <ul style="list-style-type: none"> - In time of war, or of emergency proclaimed by the President, he may utilize the PHS to promote the public interest. The President may by Executive order declare the commissioned corps of the PHS to be a military service. - Upon such declaration, the commissioned corps (a) will constitute a branch of the land and naval forces of the U.S., (b) will, to the extent prescribed by regulations of the President, be subject to the Uniform Code of Military Justice [10 U.S.C. 801 et seq.], and (c) will continue to operate as part of the PHS except to the extent that the President may direct as Commander in Chief.
<p><i>1135 Waivers</i></p>	<p>Secretary of Health & Human Services 42 U.S.C. § 1320b-5</p>	<p>Authority to Waive Requirements During National Emergencies</p> <ul style="list-style-type: none"> - Section 1135 of the Social Security Act (SSA) authorizes the Secretary of HHS to waive or modify certain requirements of Medicare, Medicaid, and the State Children's Health Insurance Program during certain emergencies. Section 1135 waivers require both: <ul style="list-style-type: none"> 1) <i>a declaration of national emergency or disaster</i> by the President under the National Emergencies Act or the Stafford Act and 2) <i>a public health emergency</i> determination by the Secretary under the PHS Act. Waivers may be requested by affected healthcare providers in the emergency area during the emergency period. - The Secretary may make a waiver retroactive to the beginning of the emergency period or any subsequent date thereafter. - In addition, the Secretary may specify that the waivers terminate 60 days from publication, which <i>may be extended</i>, provided that neither the original 60-day period nor any extension extends beyond termination of the applicable declaration or determination. - Waivers related to the Emergency Medical Treatment and Active Labor Act (EMTALA) and the Health Information Portability and Accountability (HIPAA) Privacy Rule are subject to different requirements and may terminate after 72 hours.
<p><i>Isolation & Quarantine</i></p>	<p>US Surgeon General with approval of the HHS Secretary 42 USC 6A Part G §264</p>	<p>Regulations to control communicable diseases</p> <ul style="list-style-type: none"> - The Surgeon General, with the approval of the Secretary, is authorized to make and enforce regulations as in his judgment are 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. - For purposes of carrying out and enforcing regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in their judgment as may be necessary. - Regulations may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a qualifying stage and <ul style="list-style-type: none"> (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 disease in a qualifying stage, will be moving from a State to another State. <p>Regulations may provide that if upon examination any individual is found to be infected, he may be detained for a time and in a manner as may be reasonably necessary.</p>

			<ul style="list-style-type: none"> – Preemption: Nothing in this section, or the regulations may be construed as superseding any provision under State law except to the extent that a provision conflicts with an exercise of federal authority.
	US Surgeon General	42 USC 6A Part G §265	<p>Suspension of entries and imports from designated places to prevent spread of communicable diseases</p> <p>Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of a disease into the U. S., and that this danger is so increased by the introduction of persons or property from a country that a suspension of the right to introduce persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations <i>approved by the President</i>, will have the power to prohibit, in whole or in part, the introduction of persons and property from a countries or places as they will designate in order to avert the danger, and for a period of time as they may deem necessary.</p>
	Secretary of Health & Human Services	42 U.S.C. § 271	<p>Penalties for Violation of Quarantine Law</p> <ul style="list-style-type: none"> – Violation of federal quarantine regulations is a crime punishable by a fine of not more \$1,000 or by imprisonment for not more than one year, or both. – Individuals may be punished by a fine of up to \$100,000 per violation not resulting in the death of an individual, or up to \$250,000 per violation resulting in the death of an individual. – Organizations may be fined up to \$200,000 per violation not resulting in the death of an individual and \$500,000 per violation resulting in the death of an individual [18 U.S.C. 3559, 3571(c)].
Emergency Use Authorization (EUA)	Secretary of Health & Human Services	21 USC §360bbb-3	<p>Authorization for medical products for use in emergencies</p> <ul style="list-style-type: none"> – The Secretary may introduce into interstate commerce, during the effective period of a declaration a drug, device, or biological product intended for use in an actual or potential emergency. – An authorization may authorize an emergency use of a product that- <ul style="list-style-type: none"> (A) is not approved, licensed, or cleared for commercial distribution, or (B) is approved, licensed, or cleared, but which use is not an approved, licensed, or cleared use of the product.
Strategic National Stockpile and Security (SNS)	Secretary of Health & Human Services	42 U.S.C. § 247d-6b ; 42 U.S.C. § 300hh-10(c)(3)(b)	<p>The SNS (including drugs, vaccines, biological products, medical devices, and other supplies) is maintained by the Secretary of HHS, in collaboration with the Centers for Disease Control and Prevention (CDC) Director, and in coordination with the Secretary of the Department of Homeland Security (DHS), to provide for the emergency health security of the U. S.</p> <p>The Secretary may deploy the SNS to respond to an actual or potential public health emergency, protect the public health or safety, or as required by DHS, respond to an actual or potential emergency. The responsibility and authority to coordinate the SNS has been assigned to the Assistant Secretary for Preparedness and Response (ASPR).</p>

<i>Immunity from Tort Liability for Claims of Loss</i>	Secretary of Health & Human Services	42 U.S.C. §§ 247d-6d, 247d-6e	<p>Public Readiness and Emergency Preparedness (PREP) Act of 2005</p> <ul style="list-style-type: none"> - The PREP Act authorizes the Secretary of HHS to issue a declaration that provides immunity from tort liability for claims of loss (except willful misconduct) caused by, arising out of, relating to, or resulting from administration or use of countermeasures to diseases, threats and conditions determined by the Secretary to constitute a present or credible risk of a future public health emergency. - The immunity applies to entities and individuals involved in the development, manufacture, testing, distribution, administration, and use of such countermeasures. - The PREP Act immunity explicitly applies to products or technology intended to enhance medical countermeasures, in addition to the countermeasures themselves. - The Secretary’s declaration includes, among other things, the countermeasures covered by the declaration; <ol style="list-style-type: none"> 1. The category of diseases, health conditions, or health threats for which administration and use of the countermeasures recommended; 2. The effective time period of the declaration; 3. The population of individuals receiving the countermeasure; 4. Limitations, if any, on the geographic area for which immunity is in effect; 5. Limitations, if any, on the means of distribution of the countermeasure; and 6. Any additional persons identified by the Secretary as qualified to prescribe, dispense, or administer the countermeasures. - The Act also authorizes a fund in the U. S. Treasury to provide compensation for injuries directly caused by administration or use of the countermeasure covered by the Secretary’s declaration.
<i>Liability Protections for Volunteers</i>		42 U.S.C. §§ 14501–14505	<p>Volunteer Protection Act of 1997</p> <ul style="list-style-type: none"> - The Volunteer Protection Act supports and promotes the activities of organizations that rely on volunteers by providing the volunteers some protections from liability for economic damages for activities relating to the work of the organizations. - To be found not liable for the injury caused by a negligent act or omission of the volunteer, the volunteer must have been acting within the scope of his or her responsibilities in the nonprofit or government agency. - The volunteer must have appropriate licensure or certification if required for the volunteer’s duties; he or she must not have acted with gross negligence, reckless disregard, willful or criminal misconduct, or flagrant indifference; and the injury cannot have occurred while the volunteer was intoxicated. - The injury cannot have occurred while the volunteer was operating an automobile or other vehicle for which the state requires an operator’s license and insurance. - This Act <i>does not limit</i> the liability of the nonprofit or government agency. - The Act <i>does not limit</i> an injured party’s ability to sue for non-economic damages, provide immunity to the non-profit organization or government entity supervising the volunteer, nor limit a nonprofit or government entity’s ability to bring a civil action against the volunteer. States may opt out of the Volunteer Protection Act.

State Government Authorities

Constitutional Authority	
<i>The Police Power</i>	<i>Police powers</i> were reserved in the federal constitution for states' use when needed for the preservation of the common good. When applied, they allow states to pass and enforce isolation and quarantine, health, and inspections laws to interrupt or prevent the spread of disease. ⁴ See <i>Medtronic, Inc. v. Lohr</i> , 518 U.S. 470, 475 (1996) ("Throughout our history the several states have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, matters of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." (internal citations omitted)); BLACK'S LAW DICTIONARY 1196 (8 TH ED. 2004); ERNST FREUND, <i>THE POLICE POWER: PUBLIC POLICY AND CONSTITUTIONAL RIGHTS</i> iii, 3 (1904). The police power supports the authority of a state to enact and enforce "health laws of every description." Jacobson, <i>supra</i> , 197 U.S. at 25.
<i>The Parens Patriae Power</i>	The <i>parens patriae</i> power is the power of the state to serve as guardian of persons under legal disability, such as juveniles or the insane. See <i>Heller v. Doe</i> , 509 U.S. 312, 332 (1993) (" [T]he state has a legitimate interest under its parens patriae powers in providing care to its citizens who are unable to care for themselves....") (internal citations omitted); BLACK'S LAW DICTIONARY 1144 (8 TH ED. 2004)
<i>State Constitutional Powers</i>	Authorities granted under each individual state constitution.

Resources

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- [NCSL State Quarantine and Isolation Statutes](#)
 - [Office of the Assistant Secretary for Preparedness and Response \(ASPR\)](#)
 1. [Legal Authorities, Policies, and Committees](#)
 2. [ASPR Public Health Declarations Questions & Answers](#)
 - [CDC Public Health Law Program](#)
 1. [Selected Federal Legal Authorities Pertinent to Public Health Emergencies](#)
 2. [Public Health Preparedness Capabilities: National Standards for State and Local Planning](#)
 3. [State, Tribal, Local, and Territorial Public Health Professionals Gateway](#)
 4. [Funding and Guidance for State and Local Health Departments](#)
 5. [CDC Ebola Resources](#)

¹ Homeland Security Counsel, *National Strategy for Pandemic Influenza: Implementation Plan 209* (GPO May 2006) available at <http://www.flu.gov/planning-preparedness/federal/pandemic-influenza-implementation.pdf> .

² Id. At n.207.

³ 42 U.S.C. § 264; 42 C.F.R. § 70.2. During the 2003 outbreak of severe acute respiratory syndrome (SARS), U.S. patients were isolated until they were no longer infectious, allowing them to receive medical care and helping to contain the spread of the illness. However, there were no individual or population-based quarantines of persons who may have been in contact with infected persons. The CDC advised persons who were exposed, but not symptomatic, to monitor themselves for symptoms and further advised home isolation and medical evaluation if symptoms appeared. CDC, Isolation and Quarantine Fact Sheet, 2004, available at http://www.cdc.gov/ncidod/dq/sars_facts/isolationquarantine.pdf .

⁴ Public Health Reports, Jorge E. Galva, J.D., MHA, Christopher Athison, MPA, and Samuel Levey, PHD, SM, “Public Health Strategy and the Police Powers of the State.” 2005 Supplement I, Vol. 120.

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