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The Coronavirus Epidemic and Quarantine Laws

In his Health Law column, Francis Serbaroli addresses the current coronavirus outbreak, and New York state and New York City's statutory and regulatory quarantining requirements. He advises that elected officials, public health authorities, and their lawyers, should closely follow established laws for dealing with infectious diseases, and that courts should exercise caution in deciding legal challenges to quarantine orders and other disease containment efforts.

By Francis J. Serbaroli | March 16, 2020 | New York Law Journal

Here we go again. Last year, it was the outbreak of measles among individuals who had not been vaccinated. This year, it's the coronavirus epidemic that originated in China and, as of this writing, has spread to a growing number of patients in the United States and several other countries.

While the federal Centers for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services is a high profile and valuable source of information on the spread of contagious diseases such as coronavirus cases, and preventive steps to take to avoid infection, many people do not realize that actual containment and quarantining of communicable disease within the United States is largely the responsibility of states and municipalities. The federal government is primarily responsible for keeping illnesses from crossing our borders.

It is thus timely to again review current New York State and New York City laws and regulations covering what our state and local governments are empowered to do with respect to patients having or suspected of having coronavirus or other infectious diseases. If some of the terms in these laws seem antiquated (e.g., "magistrate"), it's because the origins of most of these laws go back more than a century, and were somewhat revised in the 1950s.

Controlling Outbreaks

State Law. PHL §2100 confers broad authority on local boards of health and health officers (commonly the local commissioner of health) to deal with outbreaks of infectious diseases:

Every local board of health and every health officer shall guard against the introduction of such communicable diseases as are designated in the sanitary code, by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases.

Every local board of health and every health officer may:

(a) provide for care and isolation of cases of communicable disease in a hospital or elsewhere when necessary for protection of the public health and,

(b) subject to the provisions of the sanitary code, prohibit and prevent all intercourse and communication with or use of infected premises, places and things, and require, and if necessary, provide the means for the thorough purification and cleansing of the same before general intercourse with the same or use thereof shall be allowed.

PHL §§2101-2102 impose requirements on physicians, hospitals, laboratories, hotels, lodgings, and others to report diagnosed cases of infectious diseases to local health officers and/or the state Department of Health (DOH or Department), and §2103 requires local health officers in turn to report such diseases to DOH.

PHL §2120 authorizes specific steps to control "dangerous and careless patients":

Whenever a complaint is made by a physician to a health officer that any person is afflicted with a communicable disease or is a carrier of typhoid fever, tuberculosis, diphtheria or other communicable disease and is unable or unwilling to conduct himself and to live in such a manner as not to expose members of his family or household or other persons with whom he may be associated to danger of infection, the health officer shall forthwith investigate the circumstances alleged.

If the health officer finds after investigation that a person so afflicted is a menace to others, he shall make and file a complaint against such person with a magistrate, and on such complaint the said person shall be brought before such magistrate.

The magistrate after due notice and a hearing, if satisfied that the complaint of the health officer is well founded and that the afflicted person is a source of danger to others, may commit the said person to any hospital or institution established for the care of persons suffering from any such communicable disease or maintaining a room, ward or wards for such persons.

In making such commitment the magistrate shall make such order for payment for the care and maintenance of the person committed as he may deem proper.

A person who is committed pursuant to the provisions of this section shall be deemed to be committed until discharged in the manner authorized by section two thousand one hundred twenty-three of this chapter.

PHL §§2121-2122 spell out the duties of a patient to comply with all of the rules and regulations of the hospital or institution to which the patient has been committed. Failure to do so may result in the patient being "placed apart" from other patients. If a confined patient willfully violates the institution's rules and regulations, or repeatedly conducts himself in a disorderly manner, the chief medical officer of the institution may order the patient taken before a magistrate and may enter a complaint for disorderly conduct. The magistrate, "after a hearing and upon sufficient evidence of such disorderly conduct" may order the individual committed for up to six months: "to any [penal] institution to which persons convicted of disorderly conduct, vagrancy or similar violations are committed."

Presumably, in this day and age, commitment of disorderly patients would be to a secure medical unit in a private or municipal hospital, or in extreme cases, the medical unit of a state or municipal correctional facility.

PHL §2123 authorizes the chief medical officer of a hospital or other institution to which an individual has been committed to certify that the individual has obeyed the rules and regulations of the institution, and that in the judgment of such chief medical officer, the individual may be discharged "without danger to the health or life of others." The chief medical officer is required to report each discharge to the health officer of the local health district that the individual came from. PHL §2124 affords any committed individual the right to appeal to any court having jurisdiction for a review of the evidence upon which the commitment order was made.

Similarly, 10 NYCRR §2.29 authorizes a health officer, when a case of a highly communicable disease comes to his/her attention, to order the isolation of the infected individual "as in his judgment he deems necessary." Thus, such isolation can be at the individual's home, or the health officer may order the removal of the infected individual to a suitable hospital.

More provisions regarding the investigation, determination and reporting of cases of contagious diseases, quarantining and isolating infected individuals, and other measures for public protection are found in the State Sanitary Code. 10 NYCRR Chapter 1, Part 2.

On March 9, 2020 at a special meeting of the New York State Public Health and Health Planning Council (PHHPC), the statutory body that is part of DOH and is responsible for the enactment of the Sanitary Code, the PHHPC added new definitions and reporting requirements, and expanded the requirements for investigating, reporting and issuing quarantine orders in actual or suspected cases of contagious diseases. The DOH summary of these new regulations is as follows:

10 NYCRR Part 2 Amendments:

—Relocate and update definitions, and add new definitions.

- Repeal and replace current section 2.6, related to investigations, to make existing clarify [sic] local health department authority.

—Sets forth specific actions that local health departments must take to investigate a case, suspect case, outbreak, or unusual disease.

—Requires individuals and entities subject to a public health investigation to cooperate with the Department and local health departments.

—Clarifies authority for the Commissioner to lead investigation activities.

—Codifies in regulation the requirement that local health departments send reports to the Department during an outbreak.

- New section 2.13 added to clarify isolation and quarantine procedures.

—Clarify that the State Department of Health has the authority to issue isolation and quarantine orders, as do local departments of health.

—Clarifies locations where isolation or quarantine may be appropriate.

—Sets forth requirements for the content of isolation and quarantine orders.

—Specifies other procedures that apply when a person is isolated or quarantined.

—Explicitly states that violation of an order constitutes grounds for civil and/or criminal penalties.

Relocates and updates existing regulatory requirements that require the attending physician to report cases and suspected cases to the local health authority, and to require physicians to provide instructions concerning how to protect others.

10 NYCRR Part 58 Amendments:

- New section 58-1.14 added clarifying reporting requirements for certain communicable diseases.

—Requires the Commissioner to designate those communicable diseases that require prompt action, and to make available a list of such diseases on the State Department of Health website.

—Requires clinical laboratories to immediately report positive test results for communicable diseases identified as requiring prompt attention, in a manner and format identified by the Commissioner.

—Requires clinical laboratories to report all test results, including negative and indeterminate results, for communicable diseases identified as requiring prompt attention, via the Electronic Clinical Laboratory Reporting System (ECLRS).

10 NYCRR Part 405 Amendments:

- Mandates hospitals to report syndromic surveillance data during an outbreak of a highly contagious communicable disease.
- Permits the Commissioner to direct hospitals to take patients during an outbreak of a highly contagious communicable disease, which is consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA).

New York City Ordinances. PHL §§2110 and 2125 exempt the city of New York, which has its own health code, from the PHL's provisions regarding control of infectious diseases. New York City's Health Code (NYCHC) §3.01(c) confers the following broad authority: "Subject to the provisions of the New York City Health Code or other applicable law, the New York City Department of Health and Mental Hygiene may take such action as may become necessary to assure the maintenance of public health, the prevention of disease, or the safety of the City and its residents."

The NYCHC details the steps that the DHMH's Commissioner can take to quarantine those having or even suspected of having an infectious disease. NYCHC §11.23(a) states:

Upon determining by clear and convincing evidence that the health of others is or may be endangered by a case, contact or carrier, or suspect case, contact or carrier of a contagious disease that, in the opinion of the Commissioner, may pose an imminent and significant threat to the public health resulting in severe morbidity or high mortality, the Commissioner may order the removal and/or detention of such a person or of a group of such persons by issuing a single order, identifying such persons either by name or by a reasonably specific description of the individuals or group being detained. Such person or group of persons shall be detained in a medical facility or other appropriate facility or premises designated by the Commissioner ….

The NYCHC authorizes detention until the individual is no longer contagious or is determined not to have been infected or exposed to the disease. Id. §11.23(c). Detained individuals must:

1) have his or her medical condition and needs assessed and addressed on a regular basis; and

2) be detained in a manner that is consistent with recognized isolation and infection control principles in order to minimize the likelihood of the transmission of infection to such person and to others.

Id. §11.23(d)

If detention is for up to three business days, the detainee may request an opportunity to be heard. Detention beyond three business days requires an additional order of the Commissioner. If detention is for more than three business days and the detainee requests release, the Commissioner is required to apply for a court order (and an expedited hearing) authorizing continued detention within three business days of the detainee's request. No individual can be detained for more than 60 days without a court order, and the Commissioner is required to seek further court review of the detention within 90 days following the initial court order and every 90 days thereafter.

In all such court hearings, the Commissioner is required to prove the necessity of the continuing detention by clear and convincing evidence. Id. §11.23(e)-(f). No medication may be forcibly administered to anyone without a prior court order. Id. §11.23(l) The NYCHC also authorizes the Commissioner to issue and seek enforcement of any other orders deemed "… necessary or appropriate to prevent dissemination or transmission of contagious diseases or other illnesses that may pose a threat to the public health …" These include:

- orders to remain isolated or quarantined at home or in premises acceptable to the [DHMH] under such conditions and for such period as will prevent transmission of the contagious disease;
- orders requiring the testing or medical examination of persons who may have been exposed to or infected by a contagious disease;

- orders to require an individual who has been exposed to or infected by a contagious disease to complete an appropriate and prescribed course of treatment, preventive medication or vaccination.

Id. §11.23(k)

NYCHC §11.17 includes other steps that can be taken to quarantine infected persons:

Police Power and Limitations.

(a) It shall be the duty of an attending physician, or a person in charge of a hospital, clinic, nursing home or other medical facility to isolate a case, carrier, suspect case or suspect carrier of diphtheria, rubella (German measles), influenza with pandemic potential, invasive meningococcal disease, measles, monkeypox, mumps, pertussis, poliomyelitis, pneumonic form of plague, severe or novel coronavirus, vancomycin intermediate or resistant Staphylococcus aureus (VISA/VRSA), smallpox, tuberculosis (active), vaccinia disease, viral hemorrhagic fever or any other contagious disease that in the opinion of the Commissioner may pose an imminent and significant threat to the public health, in a manner consistent with recognized infection control principles and isolation procedures in accordance with State Department of Health regulations or guidelines pending further action by the Commissioner or designee.

(b) Whenever the person in charge of a shelter, group residence, correctional facility, or other place providing medical care on site is not capable of implementing appropriate isolation precautions for the specific disease, upon discovering a case, carrier, suspect case or suspect carrier of a contagious disease of the kind as set forth in subdivision (a), such person in charge shall mask such individual, if indicated, and shall isolate the individual by placing him or her in a single room as instructed by the Department until such time as the individual can be transported to an appropriate healthcare facility that is capable of implementing appropriate isolation precautions for the specific disease.

(c) The person in charge of a school, day care facility, camp or other congregate care setting with children under the age of six, homeless shelter, correctional facility, group residence or other congregate residential setting providing care or shelter shall, upon discovering a case, carrier, suspect case or suspect carrier of a contagious disease set forth in subdivision (a) shall mask such person, if indicated, and isolate the individual by placing him or her in a single room as instructed by the Department until the person can be safely transferred to an appropriate medical facility for evaluation.

(d) A case, contact, carrier or suspect case, contact or carrier of a contagious disease set forth in subdivision (a) who is not hospitalized may, in accordance with the provisions of subdivision (k) of §11.23 of this Article, be ordered by the Department to remain in isolation or quarantine at home or other residence of his or her choosing that is acceptable to the Department, under such conditions and for such duration as the Department may specify to prevent transmission of the disease to others.

Court Challenges

Despite the wealth of cases upholding state and local governments' power to take extraordinary steps to address a public health threat, a declaration of a public health emergency or invoking the statutory requirements of quarantine can still trigger court challenges.

It is incumbent upon state and local public health authorities in every state not only to monitor outbreaks of all infectious diseases, but also to enforce statutory quarantine requirements, and as necessary, strengthen the provisions of their health and sanitary codes dealing with infectious diseases. Elected officials should rely on the statutory provisions regarding quarantine that have been upheld by the courts

for generations. State attorneys general and municipal lawyers like corporation counsels and county attorneys must be knowledgeable about and prepared to defend their public health authorities' efforts to prevent and contain infectious diseases. Lastly, judges deciding legal challenges to quarantines should avail themselves of the expertise of the wealth of epidemiologists and public health experts available in New York so they can understand the medical issues that underlie quarantine orders.

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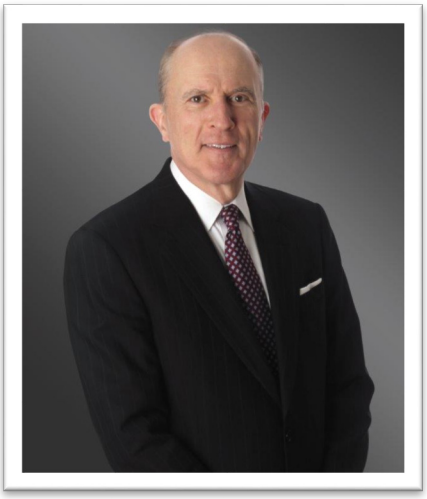

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