

Legal Implications and Resources to Assist Community Healthcare Planning Efforts

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Take Home Points

- Importance for communities to plan and prepare for pandemic and all-hazards
- Lessons learned from the H1N1 Alabama response
- Role of government in implementing the CDC community social distancing standards for mitigating pandemic influenza

Take Home Points

- Practical limitations of enforcing social distancing and the authority and legal framework upon which enforcement may be based
- Resources available for all-hazards and pandemic planning efforts

Why Is All-hazards Healthcare Planning Important?

- Manmade, natural, and weather events
 - Terrorism, hurricanes, tropical storms, tornados, floods, heat waves, ice storms, earthquakes, etc.



Why Is All-hazards Healthcare Planning Important?

- Healthcare issues are encountered in all disasters involving people



Why Is Pandemic Planning Important?

- **No one has immunity to virus**
- **Virus transmits easily person-to-person**
- **Virus causes large increases in illness and deaths**

Why Is Pandemic Planning Important?



Emergency hospital during 1918 Influenza epidemic, Camp Funston, KS
Image: National Museum of Health and Medicine, USA

1918 Pandemic in Alabama

- **September 28, 1918**
 - 1st Alabama case was in Huntsville
- **October 5, 1918**
 - 1,100 cases in Huntsville
- **October 7, 1918**
 - Governor called for “closing of schools, churches, theatres and picture shows...”

1918 Pandemic in Alabama

- **October 13, 1918**
 - 2,367 cases at Camp Sheridan (outside Montgomery)
- **October 13, 1918**
 - All physicians, druggists and prescription clerks in Huntsville, except one, ill with influenza

1918 Pandemic in Alabama

- **October 15, 1918 – Huntsville**
 - Business demoralized
 - Postal Service crippled
 - Alabama Power having difficulty finding employees
 - Business ordered to curtail hours of operation

1918 Pandemic in Alabama

- **October 22, 1918**
 - 12,000 cases reported in Montgomery

Lessons from Canada: SARS

- **Communications in Toronto “demystified” quarantine**
 - **300,000 calls to hotlines staffed by 80 nurses**
 - **Community meetings were held**
 - **Information posted on web sites in 14 languages**

Lessons from Canada: SARS

- **Substantial “Social Cohesion” in PH Emergency**
 - **“When presented with clear communication and practical guidance, public behavior can be very responsible in a public health emergency.”**

Lessons Learned from H1N1 in Alabama 2009 - 2010

- **During the seven month 2009 H1N1 Pandemic response, 6,449 specimens were tested to assist in tracking the disease**
- **Vaccination clinics were conducted in every school in Alabama as well as in over 3,000 clinic sites around the state**

Lessons Learned from H1N1 in Alabama 2009 - 2010

- **At the beginning of the response ADPH Pandemic influenza response plans were activated**
 - **Significantly reduced start up time for the response and aided the ADPH management in getting things moving**

Lessons Learned from H1N1 in Alabama 2009 - 2010

- **Plans and protocols need to be developed now to address rumors, myths, and other misinformation early**

Lessons Learned from H1N1 in Alabama 2009 - 2010

- **Explore planning and protocol options for how to most efficiently vaccinate and maintain motivation on the part of the public to receive vaccine while working with inconsistent and unpredictable vaccine supply**

Assumptions

- If pandemic influenza occurs:
 - Vaccine may not be available immediately
 - Antivirals will be used to treat ill
 - Vaccines and antivirals may be in short supply
 - Society, including governmental functions, may be disrupted

CDC Community Standards for Mitigation of Avian Flu

- Social distancing
- Closing schools and daycare facilities for 12 weeks
- Canceling public gathering
- Advocating liberal work-leave policies
- Telecommuting

CDC Community Standards for Mitigation of Avian Flu

- Voluntary isolation of cases
- Quarantine of household contacts

The Main Defense

- The main defense will be a combination of measures, both clinical and non-clinical including vaccination but also social distancing

Social Distancing

- Social distancing plans are based on the scientific knowledge of how the influenza virus spreads
- Public education
- Good will has a “short shelf-life”

Focused Measures to Increase Social Distancing

- Cancel events
- Close buildings
- Restrict access to sites
- How do these affect critical infrastructure?
- How do these affect society as a whole?
- How do these affect individuals?

Role of the Government

- Investigate the influenza virus
- Disseminate information that will assist the public
 - Chance of dying in various high risk and age groups
 - Investigate location of cases and pace of spread

Role of the Government

- Estimate the efficacy of various modes of transmission
- Provide accurate information about the course of the pandemic

Role of the Government

- Determine priority groups for antivirals and distribute them
- Determine priority groups for vaccine, and distribute it
- Test blood for immunization to virus
- Suspend mandatory school attendance
- Provide alternatives for schooling

Alabama Laws on Social Distancing



The Closest Things

- Quarantine – §§22-12-1, et seq.
- Governor’s Emergency Powers – §§31-9-1, et seq.
- Nuisance – §§22-10-1, et seq.
- Isolation as a notifiable disease – §§22-22A-1, et seq.

The Closest Things

- Public and private Boards of Education close schools and school activities
- BOE COOP Appendix B.4, Sub-objective B.4.1
- Local ordinances closing public gatherings and buildings

A Seminal Case – *Jacobson v. Massachusetts*

- **Facts**
 - Rev. Jacobson refused to be vaccinated against smallpox in Cambridge, MA
 - Fined \$5.00 and appealed to the United States Supreme Court

A Seminal Case – *Jacobson v. Massachusetts*

- **Question presented for review**
 - What are the limits of how far the state can go to protect the public health?

Summary of the Holding

- The court found this as a legitimate use of state powers and established a floor of constitutional protections that consists of four standards:
 - Necessity
 - Reasonable means
 - Proportionality
 - Harm avoidance

Summary of the Holding

- Are the secured rights “fundamental”?
 - If “no,” the state may impose limits “reasonably related to a legitimate state of interest”
 - If “yes,” the rights cannot legally be violated

What is Quarantine?

- Began during the fourteenth century in an effort to protect coastal cities from plague epidemics
- Ships arriving in Venice from infected ports were required to sit at anchor for forty days before landing
- This practice, called quarantine, was derived from the Latin word *quarisma*, meaning forty

State Powers

- Police power to protect public health and safety
- Statutes generally provide powers for mandatory immunization, testing, treatment, isolation and/or quarantine

State Powers

- In Alabama, §§22-11A-18, et seq. and §§22-12-1, et seq. are the principle statutes involved
- Subject to constitutional and statutory procedural protections

Quarantine and Isolation: Definitions

- “Isolation refers to the separation of persons who have a specific infectious illness from those who are healthy and the restriction of their movement to stop the spread of that illness...”

Quarantine and Isolation: Definitions

- “Quarantine refers to the separation and restriction of movement of persons who, while not yet ill, have been exposed to an infectious agent and therefore may become infectious.”

Contrast: Quarantine and Isolation

- Quarantine
 - Applies to individuals who “might” have the disease
 - Is ordered by the Health Officer, local authorities, or Governor
 - Can be ordered quickly

Contrast: Quarantine and Isolation

- Isolation
 - Individuals are exhibiting signs and symptoms
 - Must be ordered by the Court
 - Requires time for hearings

What Happens?

- Authority - §§ 22-12-1, et .seq.
- An order is issued by proper authorities
- The person or place is “locked down”
- No one in – no one out
- Enforced by civil authorities

What Happens?

- Fines and jail time for “breaking quarantine”
- Alabama’s proposed new law/regulations – tracks Model Act

Procedural Requirements

- Quarantine/isolation restricts liberty of individual
 - Similar to criminal arrest or civil commitment
 - Right to “due process” hearings
 - Right to notice
 - Right to counsel

Procedural Requirements

- Right to hearing on request
- Rational/reasonable basis for detention

Quarantine Example: State Hearing Requirement

- Quarantine - Ex Parte Gilbert, 135 SW 2d 718 (Tex. Crim. 1940)
 - “...a lawful arrest may be made without preliminary [hearing] ...

Quarantine Example: State Hearing Requirement

–... but if, after arrest, such person challenges the right of the authorities to continue the detention, the fundamental law accords him the right to have the legality of his detention inquired into by a proper court in a habeas corpus proceeding...”

Ex Parte Gilbert

- “The law denies to no one restrained of his liberty without a hearing the right to prove in some tribunal that the facts justifying his restraint do not exist.”
- We believe the Alabama courts would follow this principle
 - See Lynch v. Baxley, 744 F.2d 1452 (11th Cir. 1984)

Quarantine Principles

- Alabama law is silent on procedural requirements, however, “Model Act” principles should apply
 - Detention “by least restrictive means necessary”
 - Including “confinement in private homes or other public or private premises”

Quarantine Principles

- Separate isolated from quarantined individuals
- Monitor health status of individuals
- Attend to needs of detained individuals
 - Food, shelter, clothing, medical treatment, communication
- Safe and hygienic detention facility

Quarantine Principles

- Consider cultural and religious beliefs
 - “To the extent possible”

Quarantine in Alabama - Uses

- Earliest usages were local in nature such as in Mobile during yellow fever outbreak of 1878

- In Mobile:
297 ill,
87 dead



Quarantine in Alabama - Uses

- Brundidge, 1904.
Mayor J.I. W. Flowers issued quarantine against workers engaged on the long distance telephone line between Brundidge and Ozark because of smallpox
- None of the workers or anyone associated with them to be allowed inside the city limits

Quarantine – Expenses

- Section 22-12-16
 - “The expense of enforcing any quarantine for a county, or for a portion thereof... shall be defrayed by the county commission of the county”

Quarantine – Expenses

- “that incurred in conducting a quarantine for an incorporated city or town shall be defrayed by the authorities of the city or town declaring quarantine.”

Encouraging Voluntary Compliance

- Large quarantine with consent of those involved is more effective
- Even with voluntary compliance, there are factors that undercut compliance:
 - Lost wages or income
 - Groceries and essential services
 - Boredom

Isolation - Commitment

- §22-11A-38, et seq. provides the mechanism for involuntary commitment for isolation and treatment of those infected
- This follows the mental health model and requires hearings before the probate court
- Six factors must be proven

Isolation - Commitment

- Could be used in emergency, typically used with TB
- Due process is provided for isolation/commitment for testing/treatment

Alabama Emergency Proclamations

- Under Emergency Management Law §§ 31-9-2, et seq.:
 - Governor proclaims an “emergency”
 - Enemy attack, sabotage or “other hostile action”

Alabama Emergency Proclamations

- Fire, flood and “other natural causes”
- Definition covers B/T incidents or naturally occurring events like hurricanes, tornadoes or outbreaks

Alabama Emergency Proclamations

- "Public Health Emergencies," a special class
- Alabama adopts the "Model Act" definition

Governor's Powers

- §31-9-6 provides authority to:
 - Make orders, rules and regulations
 - To utilize all state employees
 - To utilize any state or local officers or agencies, granting state officer immunity to such, including volunteers

Governor's Orders

- In theory, given the severity of the pandemic, the Governor could issue an Emergency Order and implement by executive fiat many social distancing measures; among them, social distancing strategies:
 - Crowded places and large gatherings of people must be avoided

Governor's Orders

- Avoid meeting people face-to-face
 - Use the telephone, video conferencing and internet to conduct business
- Avoid any unnecessary travel and cancel or postpone non-essential meetings, gatherings, workshops, training sessions, etc.

Governor's Orders

- If possible, arrange for employees to work from home or work variable hours to avoid crowding the workplace

More Governor's Orders

- Practice "ghost" shift changes wherever possible
- Avoid public transport
- Bring lunch and eat at desk away from others
- Introduce staggered lunchtimes
- Do not congregate in break rooms or areas where people socialize

More Governor's Orders

- Set up systems where clients/customers can pre-order/request information via phone/email/fax and pick up quickly
- Avoid recreational or other leisure classes/meetings
- No football games or (heaven forbid) church

Governor's Orders - Constitutionality

- What do you think of the constitutionality of such orders?
- What is the limit of the Governor's power?
- The Constitution? Is it supreme or is self-preservation a higher law?
- How about Ex. parte Merryman, 17 F. Cas. 144 (C.D.Md. 1861)

Personal Liability Protections

- Section 31-9-16 provides that:
 - Except for willful misconduct, gross negligence or bad faith, any "emergency management worker" is granted state officer immunity
 - Requirements for licenses to practice do NOT apply
 - "Emergency worker" is anyone helping out whether paid or not

Property Protections

- § 31-9-17 provides similar liability protections to those permitting the state to use their real property

Licenses - Deemed Status

- Professionals of one state are "deemed" licensed in the site state to the extent they would be licensed in their home state
 - Law enforcement for security
 - Health care workers for treatment

Public Health Nuisance

- Perhaps the State Board of Health could, by regulation, declare a violation of these or other practices to be nuisances affecting public health and abatable by court order

Public Health Nuisance

- Code of Ala. 1975, § 22-10-1
 - The following things, conditions and acts, among others, are hereby declared to be public nuisances per se, menacing public health and unlawful...

Public Health Nuisance

- (5) Such other acts, things or conditions as may, from time to time, be by the rules and regulations of the State Board of Health declared to be public nuisances per se, menacing public health...

Public Health Nuisance

- (7) The conducting of a business, trade, industry or occupation or the doing of a thing, not inherently insanitary or a menace to public health, in such a manner as to make it a menace, or likely to become a menace, to public health...

Nuisance - Abatement

- Any such nuisance shall be abated by the county board of health and the county health officer in any of the ways provided in this chapter that may be appropriate or in any other lawful manner including abatement by a “complaint.” § 22-10-2

Nuisance - Abatement

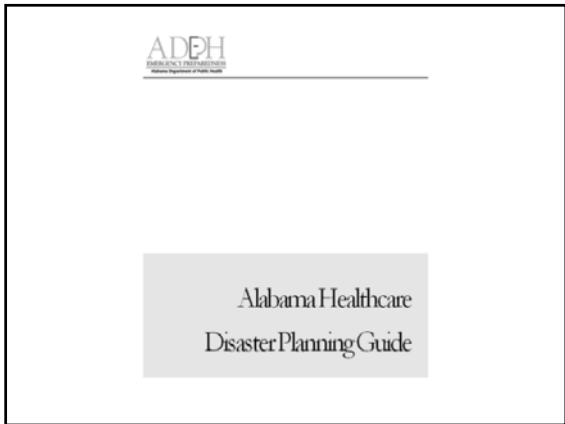
- What is the “complaint” spoken of here?



Local Ordinances

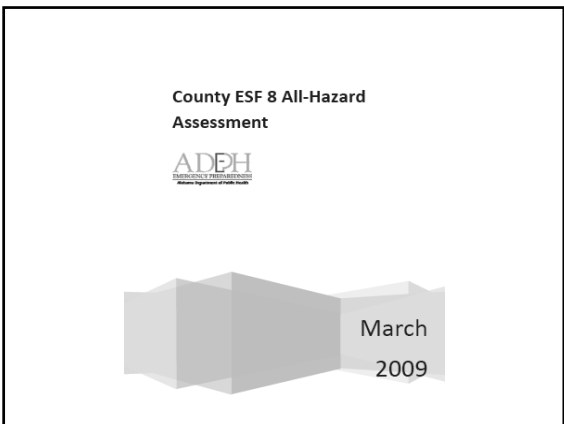
- What is the authority of the city or county to adopt ordinances invoking these measures?
- Fair exercise of police power
- Curfews
- Lead by example
- Control of local public employees

What Resources Do We Have to Help Planning Efforts?



- ### What Resources Do We Have to Help Planning Efforts?
- ***Alabama Healthcare Disaster Planning Guide***
 - Developed by ADPH
 - Planning issues presented by healthcare organizations
 - Includes ADPH resources

- ### What Resources Do We Have to Help Planning Efforts?
- Contrasts requirements from TJC, FEMA, and ASPR
 - Table of contents
 - Links to resources and information
 - Kept updated on the ADPH website



- ### What Resources Do We Have to Help Planning Efforts?
- ***County and Area ESF 8 All-Hazards Assessment***
 - Assessment of the county and area ESF 8/ medical emergency response
 - Provides mechanism to address best practices and gaps in county medical response

What Resources Do We Have to Help Planning Efforts?

- Table of contents
- Links to best practices
- Data monitored bi-annually

What Resources Do We Have to Help Planning Efforts?

- Utilize Alabama Incident Management System (AIMS) in your facility during emergencies
- Data modules include:
 - Hospitals
 - Emergency Medical Services (EMS)
 - Medical needs shelters

What Resources Do We Have to Help Planning Efforts?

- Nursing homes
- Community health centers
- Data modules in progress:
 - Blood centers
 - Alternate care sites
 - Dialysis centers
 - Evacuee shelters (mass care)

Patient Transfers

Resource/Patient Routing

Hospital	Address	Capacity	Utilized	Available	Transfers
BMC	15	4	0	4	0
DCHMC	400	200	4	196	1
FMC	38	10	17	1	0
GCH	38	38	32	6	0
NMC	100	100	32	68	0
PCMC	22	22	0	22	0

Tool for Public Health and Emergency Management

What Resources Do We Have to Help Planning Efforts?

- **SHARE – Stakeholder, Help, Advice, and Recommendation Exchange**
 - Group email system
 - Currently over 450 subscribers
 - Subject line key
 - Ask the group planning questions

What Resources Do We Have to Help Planning Efforts?

- Everyone sees the discussion
- Unsubscribe at anytime
- To subscribe:
cep@adph.state.al.us