



# SEVERE ACUTE RESPIRATORY SYNDROME

Public Health Guidance for Community-Level Preparedness and Response to Severe Acute Respiratory Syndrome (SARS) Version 2

## Supplement A: Command and Control

### Appendix A3

#### Fact Sheet: Practical Steps for SARS Legal Preparedness

##### Step 1: Know your legislation

State and local public health officers need to be familiar with the legal requirements in their jurisdictions regarding isolation of infectious persons and quarantine of exposed persons. Although most states have laws to compel isolation and/or quarantine, procedures may vary widely from jurisdiction to jurisdiction. Key persons, such as legal counsel, judges, and policymakers, should be identified and made part of your jurisdiction's planning for SARS.

##### Step 2: Plan "due process"

Procedural due process is implicated when the government seeks to deprive an individual of "liberty" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment to the U.S. Constitution. Many states, through statute or regulation, have established specific administrative and judicial schemes for affording due process to a person subject to a quarantine and/or isolation order. Schemes in other jurisdictions may not directly address this issue.

Although due process is a flexible concept and calls for procedural protections as the particular situation demands, the basic elements of due process include: adequate notice (typically through written order) of the action the agency seeks to compel; right to be heard (typically through the right to present evidence and witnesses and to contest the government's evidence and witnesses); access to legal counsel; and a final administrative decision that is subject to review in a court of law. These due process protections should not impede the immediate isolation or quarantine of an individual for valid public health reasons in an emergency situation.

##### Step 3: Draft key documents in advance

State and local public health officers should consider drafting key documents in advance of an emergency. These template documents can be critical time savers in an emergency. Documents that jurisdictions should consider preparing in advance include: draft quarantine and/or isolation orders; supporting declarations and/or affidavits by public health and/or medical personnel; and an explanation of the jurisdiction's due process procedures for persons subject to an isolation/quarantine order. Examples of documents created by other jurisdictions are found at: [www.phppo.cdc.gov/od/phlp/](http://www.phppo.cdc.gov/od/phlp/)

##### Step 4: Contact other jurisdictions

It is possible for federal, state, and local health authorities simultaneously to have separate but concurrent legal quarantine power in a particular situation (e.g., an arriving aircraft at a large city airport). Furthermore, public health officials at the federal, state, and local level may occasionally seek the assistance of their respective counterparts, e.g., law enforcement, to assist in the enforcement of a public health order. State and local public health officers should therefore be familiar with the roles and responsibilities of other jurisdictions: vertically (local, state, federal), horizontally (public health, law enforcement, emergency management, and health care), and in geographical clusters (overlapping state/local neighbors).

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### **Step 5: Engage the courts in advance**

Some jurisdictions may rely on older public health statutes that have not been amended in over half a century, while other jurisdictions may have recently revised their legal authorities to respond to bioterrorism or other public health emergencies. Judges who may be called upon to review a public health order may not be familiar with the state or local health authority's broad public health powers. During the SARS outbreak in Toronto, Canada, for example, many judges were unaware of the health officer's broad *ex parte* authority to compel isolation/quarantine under rarely used laws.

### **Step 6: Anticipate practical problems**

State and local public health officers need to be prepared for the practical problems that may arise in affording adequate due process protections to persons subject to isolation and/or quarantine orders. Such problems may include how to arrange for the appearance and representation of persons in quarantine (e.g., video conference or other remote means); how to serve an isolation/quarantine order (likely through law enforcement) and other procedures to advise persons of their legal rights; and isolation arrangements for transient or homeless populations.

### **Step 7: Communication ... communication ... communication**

Communication planning is vital not only for an effective public health response but also for an effective legal response to a public health emergency. Public health agency counsel should be aware of media training available to other public health officers. During the SARS and monkeypox outbreaks, CDC, through the Public Health Law Program ([www.phppo.cdc.gov/od/phlp/index.asp](http://www.phppo.cdc.gov/od/phlp/index.asp)), established telephone conferences for public health legal counsel to share experiences and engage in peer-to-peer consultations. Efforts are now underway to develop materials to assist state and local public health agencies in conducting further outreach on emergency public health issues to the legal community through local bar associations.

For more information, visit [www.cdc.gov/ncidod/sars](http://www.cdc.gov/ncidod/sars) or call the CDC public response hotline at (888) 246-2675 (English), (888) 246-2857 (Español), or (866) 874-2646 (TTY)

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