

# MASS QUARANTINE

## BACKGROUND INFORMATION FOR THE HEALTH AND HUMAN SERVICES INTERIM COMMITTEE MAY 18, 2005 MEETING, AGENDA ITEM 4

Office of Legislative Research and General Counsel

May 2005

### COMMITTEE OBJECTIVE

At the request of the Department of Health, the Committee will begin a study of approaches being developed elsewhere in the United States which attempt to balance individual liberty interests with the need to protect the public health through quarantine in the event of a mass exposure to a harmful biological agent. The Committee will receive an introductory briefing from the Department at its May 18 meeting.

### REASONS FOR CONDUCTING THE STUDY—SUBMITTED BY THE DEPARTMENT OF HEALTH IN APRIL

"The Department is requesting a study of current authority and models being developed elsewhere in the U.S. to determine if an approach to applying isolation or quarantine can be developed that maintains adequate protection of personal liberty but also provides tools for public health to protect the public from these emerging threats.

"Definitions (from Chapter 26-6):

*"Isolation* means the separation, for the period of communicability, of infected individuals or animals from others, in such places and under such conditions as to prevent the direct or indirect conveyance of the infectious agent from those infected to those who are susceptible or who may spread the agent to others.

*"Quarantine* means the restriction of the activities of well individuals or animals who have been exposed to a communicable disease during its period of communicability to prevent disease transmission.

"Isolation and quarantine are used as tools to control spread of an infectious disease by limiting the opportunity for spread from an infected person to a susceptible person. In most cases, this can be accomplished voluntarily with the cooperation of the individual who is either infected (isolation) or has been exposed and may become infectious (quarantine). In certain circumstances, it may be necessary to enforce involuntary isolation or quarantine. Involuntary isolation or quarantine requires a careful balance of individual liberty with the need to protect the remainder of society.

"The current legal authority for involuntary isolation and quarantine (defined in Chapters 26-6 and 26-6b in Utah statute) is based on experience with tuberculosis and specifically designed to be applied to individuals. As such, it requires legal proceedings for each individual in order to balance individual rights with the need to protect the public from exposure to infection.

"In a situation where a large number of people were simultaneously exposed to an infectious

agent (e.g., release of smallpox or plague at a football or basketball game) and quarantine of those people was necessary to prevent spread of the infection, currently required procedures might make it impossible to implement quarantine in a sufficiently timely manner. For example, during the 2003 SARS outbreak, Taiwan quarantined 131,000 individuals, and Beijing 30,000. Toronto, Canada, with legal systems and cultural norms similar to the U.S., quarantined 1,500 students from one high school. In addition to the logistical barriers involved in processing large numbers of individual legal reviews rapidly, in some situations quarantine might need to be applied to a geographic area or building for which a complete list of the individuals affected is not even available.

### UTAH QUARANTINE STATUTES

#### 26-6-4. Involuntary treatment, isolation, and quarantine.

- (1) The following individuals are subject to restriction under a department order for treatment, quarantine, or isolation:
  - (a) an individual who is infected or suspected to be infected with a communicable disease that poses a threat to the public health and who does not take action as required by the department or the local health department to prevent spread of the disease;
  - (b) an individual who is contaminated or suspected to be contaminated with an infectious agent that poses a threat to the public health and that could be spread to others if remedial action is not taken; and
  - (c) an individual who is in a condition or suspected condition which, if exposed to others, poses a serious public health hazard.
- (2) If an individual refuses to take action as required by the department or the local health department to prevent the spread of a communicable disease, infectious agent, or contamination, the department or the local health department may order temporary involuntary treatment, quarantine, or isolation of the individual and may petition the district court to order involuntary treatment, quarantine, or isolation in accordance with Title 26, Chapter 6b, Communicable Diseases - Treatment, Isolation, and Quarantine Procedures.
- (3) (a) To the extent that other sources and insurance do not pay for costs incurred, the cost of involuntary treatment, care, and maintenance necessary to prevent the spread of the communicable disease, infectious agent, or contamination of individuals subjected to involuntary treatment, quarantine, or isolation shall be provided for by the department at a reasonable rate.

- (b) If the individual is able to pay all or any part of the cost of his treatment, care, and maintenance, the department shall collect and retain the same for this program.

#### 26-6b-1. Applicability of chapter – Administrative procedures.

- (1) This chapter applies to involuntary treatment, isolation, and quarantine actions applied to individuals by the department or a local health department.
- (2) The provisions of this chapter supersede the provisions of Title 63, Chapter 46b, Administrative Procedures Act.

#### 26-6b-2. Definition of "subject to supervision."

As used in this chapter, "subject to supervision" as applied to an individual means the individual is:

- (1) infected or suspected to be infected with a communicable disease that poses a threat to the public health and who does not take action as required by the department or the local health department to prevent spread of the disease;
- (2) contaminated or suspected to be contaminated with an infectious agent that poses a threat to the public health, and that could be spread to others if remedial action is not taken;
- (3) in a condition or suspected condition which, if the individual is exposed to others, poses a serious public health hazard, or is in a condition which if treatment is not completed he will soon pose a serious public health hazard; or
- (4) contaminated or suspected to be contaminated with a chemical or biological agent that poses a threat to the public health and that could be spread to others if remedial action is not taken.

#### 26-6b-3. Temporary involuntary treatment, isolation, and quarantine.

- (1) The department, or the local health department having jurisdiction over the location where an individual who is subject to supervision is found, may issue an order for the individual's temporary involuntary treatment, quarantine, or isolation pursuant to Subsection 26-1-30(2), 26A-1-114(1)(b), or Section 26-6-4 upon compliance with the requirements of this section.
- (2) An individual who is subject to supervision who willfully fails to voluntarily submit to treatment, quarantine, or isolation as requested by the department or the local health department may be ordered to submit to treatment, quarantine, or isolation upon:
  - (a) written affidavit of the department or the local health department stating:
    - (i) a belief that the individual who is subject to supervision is likely to fail to submit to treatment, quarantine, or isolation if not

- immediately restrained;
    - (ii) this failure would pose a threat to the public health; and
    - (iii) the personal knowledge of the individual's condition or the circumstances that lead to that belief; and
  - (b) a written statement by a licensed physician indicating the physician finds the individual is subject to supervision.
- (3) A temporary order issued under Subsection (1) may:
  - (a) be made by the department or by the local health department;
  - (b) order the individual to submit to reasonable involuntary treatment, quarantine, and isolation, or any of these; and
  - (c) not require an individual to be subject to involuntary quarantine, isolation, or treatment for more than five days, excluding Saturdays, Sundays, and legal holidays, unless a petition has been filed with the district court pursuant to Section 26-6b-5.
- (4) (a) Pending issuance of an examination order pursuant to Section 26-6b-5 or an order for involuntary quarantine, isolation, or treatment from a district court pursuant to Section 26-6b-6, the individual who is the subject of the temporary order may be required to submit to involuntary quarantine, isolation, or treatment in his home, a hospital, or any other suitable facility under reasonable conditions prescribed by the department or the local health department.
  - (b) The department or the local health department, whichever initially ordered the quarantine, isolation, or treatment, shall take reasonable measures, including the provision of medical care, as may be necessary to assure proper care related to the reason for the involuntary treatment, isolation, or quarantine of an individual ordered to submit to involuntary treatment, isolation, or quarantine.
- (5) The individual who is subject to supervision shall be served a copy of the temporary order, together with the affidavit and the physician's written statement, upon being taken into custody. A copy shall also be maintained at the place of quarantine, isolation, or treatment.

**26-6b-4. Required notice -- Representation by counsel -- Conduct of proceedings.**

- (1) (a) If the individual who is subject to supervision is in custody, the department or the local health department, whichever is the petitioner, shall provide to the individual written notice of commencement of all proceedings and hearings held pursuant to Sections 26-6b-5 through 26-6b-7 as soon as practicable, and shall send the notice to the legal guardian, any immediate adult family members, legal counsel for the parties involved, and any other persons whom the individual or the district court designates. The notice shall advise these persons that a hearing may be held within the time provided by this chapter.
  - (b) If the individual has refused to permit release of information necessary for the provision of notice under this

- subsection, the extent of notice shall be determined by the district court.
  - (2) (a) If the individual who is subject to supervision is in custody, he shall be afforded an opportunity to be represented by counsel. If neither the individual nor others provide for counsel, the district court shall appoint counsel and allow counsel sufficient time to consult with the individual prior to the hearing. If the individual is indigent, the payment of reasonable attorneys' fees for counsel, as determined by the district court, shall be made by the county in which the individual resides or was found.
    - (b) The individual, the petitioner, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearings, to testify, and to present and cross-examine witnesses. The district court may, in its discretion, receive the testimony of any other individual.
    - (c) The district court may allow a waiver of the individual's right to appear only for good cause shown, and that cause shall be made a part of the court record.
    - (d) The district court may order that the individual participate in the hearing by telephonic means if the individual's condition poses a health threat to those who physically attend the hearing or to others if the individual is transported to the court.
  - (3) The district court may, in its discretion, order that the individual be moved to a more appropriate treatment, quarantine, or isolation facility outside of its jurisdiction, and may transfer the proceedings to any other district court within this state where venue is proper, provided that the transfer will not be adverse to the legal interests of the individual.
  - (4) The district court may exclude from the hearing all persons not necessary for the conduct of the proceedings.
  - (5) All hearings shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the health of the individual or others required to participate in the hearing.
  - (6) The district court shall receive all relevant and material evidence which is offered, subject to Utah Rules of Evidence.

**26-6b-5. Petition for an order of involuntary treatment, quarantine, or isolation -- Court-ordered examination period.**

- (1) (a) The department or the local health department may commence proceedings for a court-ordered involuntary treatment, quarantine, or isolation of an individual who is subject to supervision by filing a written petition with the district court of the county in which the individual resides or is located.
  - (b) The county attorney for the county where the individual resides or is located shall represent the local health department in any proceedings under this chapter.
- (2) The application under Subsection (1) shall be accompanied by:
  - (a) written affidavit of the department or the local health department stating:
    - (i) a belief the person is subject to supervision;

- (ii) a belief that the individual who is subject to supervision is likely to fail to submit to treatment, quarantine, or isolation if not immediately restrained;
  - (iii) this failure would pose a threat to the public health; and
  - (iv) the personal knowledge of the individual's condition or the circumstances that lead to that belief; and
- (b) a written statement by a licensed physician indicating the physician finds the individual is subject to supervision.
- (3) The court shall issue an examination order requiring the individual to submit to involuntary quarantine, isolation, or treatment under the supervision and care requirements of Subsection 26-6b-3(4) and to be examined to verify whether the individual is infected, contaminated, or in a condition that requires quarantine, isolation, or treatment to protect the public health if the district court finds:
  - (a) there is a reasonable basis to believe that the individual's condition requires involuntary quarantine, treatment, or isolation pending examination and hearing; or
  - (b) the individual has refused to submit to examination by a health professional as directed by the department or the local health department or to voluntarily submit to treatment, quarantine, or isolation.
- (4) If the individual who is subject to supervision is not in custody, the court may make its determination and issue its examination order in an ex parte hearing.
- (5) At least 24 hours prior to the hearing required by Section 26-6b-6, the department or the local health department, whichever is the petitioner, shall report to the court, in writing, the opinion of qualified health care providers:
  - (a) (i) regarding whether the individual: is afflicted with an infectious communicable disease that is a threat to the public health; is contaminated with a chemical or biological agent that is a threat to the public health; or is in a condition, the exposure to which poses a serious immediate public health hazard; or
  - (ii) that despite the exercise of reasonable diligence, the diagnostic studies have not been completed;
  - (b) whether the individual has agreed to voluntarily comply with necessary treatment, quarantine, or isolation; and
  - (c) whether the petitioner believes the individual will comply without court proceedings.

**26-6b-6. Court determination for involuntary supervision after examination period.**

- (1) The district court shall set a hearing regarding the involuntary quarantine, isolation, and treatment of an individual, to be held within ten business days of the issuance of its examination order issued pursuant to Section 26-6b-5, unless the petitioner informs the district court prior to this hearing that the individual:
  - (a) is not subject to supervision;
  - (b) has stipulated to the issuance of an order for involuntary quarantine, isolation, or treatment; or

- (c) has agreed that quarantine, isolation, or treatment are available and acceptable without court proceedings.
- (2) (a) If the individual is not subject to supervision, or if quarantine, isolation, or treatment are available and acceptable to the individual without court proceedings, the court may, without taking any further action, terminate the proceedings and dismiss the petition.
- (b) If the individual has stipulated to the issuance of an order for involuntary quarantine, isolation, or treatment, the court may issue an order as provided in Subsection (6) without further hearing.
- (3) (a) If the examination report required in Section 26-6b-5 proves the individual is not subject to supervision, the court may without further hearing terminate the proceedings and dismiss the petition.
- (b) The court may, after a hearing at which the individual is present in person or by telephonic means and has had the opportunity to be represented by counsel, extend its examination order for a reasonable period, not to exceed 90 days, if the petitioner has reason to believe the individual:
  - (i) is contaminated with a chemical or biological agent that is a threat to the public health; or
  - (ii) is in a condition, the exposure to which poses a serious public health hazard, but despite the exercise of reasonable diligence the diagnostic studies have not been completed.
- (4) The petitioner shall, at the time of the hearing, provide the district court with the following items, to the extent that they have been issued or are otherwise available:
  - (a) the temporary order issued by the petitioner;
  - (b) admission notes if the individual was hospitalized; and
  - (c) medical records pertaining to the current involuntary treatment, quarantine, or isolation.
- (5) The information provided to the court under Subsection (4) shall also be provided to the individual's counsel at the time of the hearing, and at any time prior to the hearing upon request of counsel.
- (6) (a) The district court shall order the individual to submit to involuntary treatment, quarantine, or isolation if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that:
  - (i) the individual is infected with a communicable disease, is contaminated with a chemical or biological agent, is in a condition, the exposure to which poses a serious public health hazard, or is in a condition which if treatment is not completed the individual will soon pose a serious public health hazard;
  - (ii) there is no appropriate and less restrictive alternative to a court order of quarantine, isolation, and treatment, or any of them;
  - (iii) the petitioner can provide the individual with treatment that is adequate and appropriate to his conditions and needs; and
  - (iv) it is in the public interest to order the individual to submit to

involuntary quarantine, isolation, and treatment, or any of them.

- (b) If upon completion of the hearing the court does not find all of the conditions listed in Subsection (6)(a) exist, the court shall immediately dismiss the petition.
- (7) The order of involuntary treatment, quarantine, or isolation shall designate the period, subject to Subsection (8), for which the individual shall be treated, isolated, or quarantined.
- (8) (a) The order of involuntary quarantine, isolation, or treatment may not exceed six months without benefit of a district court review hearing.
- (b) The district court review hearing shall be held prior to the expiration of the order issued under Subsection (7). At the review hearing the court may order involuntary quarantine, isolation, or treatment for up to an indeterminate period, if the district court enters a written finding in the record determining by clear and convincing evidence that the required conditions in Subsection (6) will continue for an indeterminate period.

**26-6b-7. Periodic review of individuals under court order.**

- (1) At least two weeks prior to the expiration of the designated period of any court order still in effect, the petitioner shall inform the court that issued the order that the order is about to expire. The petitioner shall immediately reexamine the reasons upon which the court's order was based. If the petitioner determines that the conditions justifying that order no longer exist, it shall discharge the individual from involuntary quarantine, isolation, or treatment and report its action to the court for a termination of the order. Otherwise, the court shall schedule a hearing prior to the expiration of its order and proceed under Sections 26-6b-4 through 26-6b-6.
- (2) The petitioner responsible for the care of an individual under a court order of involuntary quarantine, isolation, or treatment for an indeterminate period shall at six-month intervals reexamine the reasons upon which the order of indeterminate duration was based. If the petitioner determines that the conditions justifying that the court's order no longer exist, the petitioner shall discharge the individual from involuntary quarantine, isolation, or treatment and immediately report its action to the court for a termination of the order. If the petitioner determines that the conditions justifying the involuntary quarantine, isolation, or treatment continue to exist, the petitioner shall send a written report of those findings to the court. The petitioner shall notify the individual and his counsel of record in writing that the involuntary quarantine, isolation, or treatment will be continued, the reasons for that decision, and that the individual has the right to a review hearing by making a request to the court. Upon receiving the request for a review, the court shall immediately set a hearing date and proceed under Sections 26-6b-4 through 26-6b-6.

**26-6b-8. Transportation of individuals subject to temporary or court-ordered quarantine, isolation, or treatment.**

Transportation of an individual to the place for quarantine, isolation, or treatment pursuant to a temporary order issued by the department or a local health department or pursuant to a court order shall be conducted by the municipal law enforcement authority where the individual is located. However, if the place for quarantine, isolation, or treatment is outside of that authority's jurisdiction or if the individual is not located in a municipality, the county sheriff shall transport the individual to the place for quarantine, isolation, or treatment.

**26-6b-9. Quarantine, isolation, and treatment costs.**

If a local health department obtains approval from the department, the costs that the local health department would otherwise have to bear for involuntary quarantine, isolation, and treatment shall be paid by the department to the extent that the individual is unable to pay and that other sources and insurance do not pay.

**26-6b-10. Severability.**

If any provision of this chapter, or the application of this chapter to any person or circumstance, is found to be unconstitutional, the provision is severable and the balance of this chapter remains effective, notwithstanding that unconstitutionality.