Ebola and Beyond: Legal Preparedness for Outbreaks

NGA Solutions: Center for Best Practices Homeland Security and Public Safety
In collaboration with the Centers for Disease Control and Prevention and the American Bar Association

November 21, 2019
Agenda and Speakers

Welcome
Moderator: Don Benken, JD, MPH, Centers for Disease Control and Prevention

Expert Panel
• Henry Walke, MD, MPH, Centers for Disease Control and Prevention
• Snigdha Acharya, JD, Illinois Department of Health

Q&A

Upcoming Webinars
Today’s Moderator
Don Benken, JD, MPH
Deputy Director and Senior Public Health Advisor
Public Health Law Program
Center for State, Tribal, Local, and Territorial Support
Centers for Disease Control and Prevention
Henry Walke, MD, MPH
Director
Division of Preparedness and Emerging Infections
Centers for Disease Control and Prevention
The 2018 Ebola Outbreak

Henry Walke, MD
Incident Manager
CDC 2018 Ebola Response

November 21, 2019
Ebola

- Ebola virus disease is a rare and deadly disease caused by infection with one of six species within the genus Ebolavirus
- Since its discovery in 1976, there have been 28 outbreaks of EVD
- Current outbreak is the 10th in DRC
- Natural host of Ebola viruses unknown; bats are most likely reservoir
Ebola Virus: Disease Progression

- Not contagious until symptoms develop
- Wet symptoms develop ~ day 4 of illness
- Patient becomes more and more contagious as the illness advances
- Without treatment, death occurs 7-10 days after illness onset
- Amount of Ebola virus in the body is highest at the time of death
2018 Ebola Outbreak in Eastern Democratic Republic of Congo (DRC)

- Second largest Ebola outbreak ever recorded
- Largest outbreak in DRC
- Identified August 2018
- Regional security issues and cross border movement add to complexity
Outbreak Timeline

28 July 2018
North Kivu authorities notified Kinshasa of suspected Ebola cases

1 Aug 2018
The DRC Ministry of Health confirmed outbreak of EVD in Eastern DRC

8 Aug 2018
12 June 2019
Vaccination campaign begins

30 June 2019
DRC confirmed case in Ariwara health zone, bordering Uganda and near South Sudan

14 July 2019
First confirmed case in Goma, North Kivu, DRC, bordering Rwanda

17 July 2019
WHO declares Public Health Emergency of International Concern

18 Nov 2019
3,298 cases, 2,195 deaths in 29 health zones; 162 HCWs infected

Uganda reported 3 cases of EVD in returning travelers from DRC
Ebola outbreak as of November 20, 2019:
3298 cases, 2195 deaths, 162 health care worker infections
Public Health Fundamentals to Stop Ebola

- Surveillance
- Case Investigation
- Contact Tracing

- Infection Prevention and Control
- Safe and Dignified Burials
- Community Engagement
- Border Health
- Domestic Preparedness and Traveler’s Health
Vaccine

- As of November 12, 251,000 in DRC have received rVSV Zaire Ebola Virus Vaccine
  - Experimental single dose live vaccine containing a piece of Ebola virus
- Vaccine offered to:
  - Contacts and contacts of contacts of EVD cases (deceased or alive) through a ring vaccination strategy
  - Frontline healthcare workers
- By vaccinating contacts and contacts of contacts, a ring of protection is established around the confirmed case, preventing the spread of the virus.
Therapeutics

- Two experimental therapeutics offer new tools for Ebola treatment
  - REGN-EB3
  - mAb114
- Preliminary results indicate treatment increases survival rates 70-90%
- Available to patients under “compassionate use” protocol
2014 – 2016 West Africa Outbreak vs. 2018 DRC Outbreak
Ebola in the United States, 2014

- First imported U.S. case of Ebola
- Infection of two healthcare workers
- Infection in a returning healthcare worker
Domestic Challenges 2014

Hospital and healthcare system preparedness
Infection control
Movement and monitoring of travelers
Training
Stigma and fear

Think EBOLA
Early recognition is critical for infection control

INITIATE
Think Ebola when you approach a patient.
Start the steps for basic infection control before assessing the patient for risk.
- Always use standard precautions.
- If there are concerns that the patient could meet the criteria for Ebola, immediately separate the patient from others.

IDENTIFY
Assess your patient for:
- Travel to a country with widespread transmission or complete control measures.
- Liberia, Sierra Leone, or Mali within the last 21 days
- OR: Contact with someone with Ebola within the last 21 days
AND:
- Rashes or fever at home, or has a current temperature above 100°F
- Other symptoms:
  - Severe headache
  - Muscle pain
  - Weakness
  - Fatigue
  - Diarrhea
  - Vomiting
  - Abdominal (stomach) pain
  - Unexplained hemorrhage (bleeding or bruising)
- If the patient has both exposures and symptoms, immediately isolate the patient and inform others (see INFORM)

ISOLATE
If assessment indicates possible Ebola virus infection, take action.
- Isolate the patient in a private room with a private bathroom or covered, bedside commode and close the door.
- Wear appropriate personal protective equipment (PPE), http://go.usa.gov/ebPP
- Limit the healthcare personnel who enter the room.
- Keep a log of everyone who enters and leaves the patient’s room
- Consider alternative diagnoses and evaluate appropriately.
- Only perform necessary tests and procedures.
- Avoid aerosol-generating procedures.
- Follow CDC guidelines for cleaning, disinfecting, and managing waste, http://go.usa.gov/ebPP

INFORM
Alert others, including public health authorities:
- Notify your facility’s infection control program and other appropriate staff.
- Contact state or local public health authorities.
- Consult with state or local public health authorities about testing for Ebola.
- For a list of state and local health department members, visit, http://go.usa.gov/ebPP

For more information, visit: www.cdc.gov/yhl/ebola/hcp
CDC’s 2018 Ebola Preparedness in the United States

- Educating U.S. healthcare workers on isolating patients and preventing infection
- Tightened previous infection control guidance for healthcare workers caring for patients with Ebola
- U.S. hospitals designated as Ebola treatment centers
Domestic Preparedness and Travelers’ Health

- Recommendations for organizations sending health care or emergency response workers to Ebola outbreak areas (https://wwwnc.cdc.gov/travel/page/recs-organizations-sending-workers-ebola)
- Both available at www.cdc.gov/travel
Recommendations for Travelers and Organizations

- All travelers to outbreak area
  - Self-monitor while in outbreak area and for 21 days after leaving

- Workers **without likely occupational exposure** to Ebola virus
  - E.g., logisticians, epidemiologists, contact tracers, airport screeners
  - Limited pre-departure assessment (confirm no symptoms or potential exposures)
  - Self-monitor

- Workers **with potential occupational exposure** to Ebola virus
  - E.g., healthcare or lab (in Ebola treatment center or other facility), burial workers
  - Organization responsible for:
    - Documenting predeparture health and exposure assessment
    - Connecting returning worker with U.S. health department
    - Oversight of self-monitoring after arrival in United States

- CDC can restrict commercial travel for symptoms or unprotected exposures if necessary

- Health departments have authority to exceed CDC’s recommendations
Thank you.

For more information, contact CDC
1-800-CDC-INFO (232-4636)

The findings and conclusions in this report are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention.
Snigdha Acharya, JD
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Illinois Department of Public Health
Ebola and Beyond: Legal Preparedness for Outbreaks

Snigdha Acharya, J.D.
General Counsel

11/21/2019
EBOLA OUTBREAK

United States: 3 cases, 1 death
Spain: 1 case, 0 deaths
Senegal: 1 case, 0 deaths
Guinea: 1,472 cases, 843 deaths
Sierra Leone: 3,252 cases, 1,183 deaths
 Liberia: 4,249 cases, 2,458 deaths
Nigeria: 20 cases, 8 deaths

Counts indicate number of cases diagnosed in each country. Source: WHO, CNN | October 15, 2014
Four Core Elements of Public Health Legal Preparedness

- **Laws**—legal authorities based in science and on contemporary principles of jurisprudence;
- **Competencies**—professionals who know their operating legal framework and how to apply law to public health goals;
- **Coordination**—to implement law-based actions across jurisdictions and sectors; and
- **Information**—on public health emergency law best practices and promising policies.

--per CDC Public Health Law Program
Isolation & Quarantine

General Legal Principles

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Fundamental Legal Principles

• Public health is a “police power,” which includes the inherent state authority to enact laws and regulations to promote health, safety, welfare of citizens

• Public health powers may encroach on individual liberties
Constitutional Due Process Considerations

Deprivation of liberty implicates the Fifth and Fourteenth Amendments to the U.S. Constitution

Effort to balance the needs of the many while protecting the rights of the few
Due Process

Elements:
- Notice (written order)
- Opportunity to be heard
  - In a meaningful time and manner
  - By a neutral decision-maker
  - With access to legal counsel

Flexible concept; balancing test
- Degree of deprivation of individual rights
- Risk to the public
- Value added procedural safeguards
ISOLATION

- Separation (for a period of communicability) of ill or known infected persons to prevent transmission of an infectious disease
  - Often in a hospital setting
  - Primarily at an individual level; although may be applied to populations
  - Often voluntary, although may be mandatory
  - Fundamental, commonly used public health measure
Separation and restriction of movement of healthy persons presumed to have been exposed to contagion but not yet ill

- usually in a hospital or other residential facility
- could be at home
- may be voluntary or mandatory
QUARANTINE

CONTAGIOUS DISEASE

NO ONE SHALL ENTER OR LEAVE THIS HOUSE WITHOUT WRITTEN PERMISSION OF THE LOCAL HEALTH AUTHORITY.  (Art. 4477 - V.A.C.S.)

NO PERSON EXCEPT AN AUTHORIZED EMPLOYEE OF THE HEALTH DISTRICT SHALL ALTER, DESTROY OR REMOVE THIS CARD.  (Art. 4477 - V.A.C.S.)

ANYONE VIOLATING THIS REGULATION WILL BE FINED NOT LESS THAN $10.00 NOR MORE THAN $1,000.00 FOR EACH VIOLATION.  (ART. 770 Texas-Penal Code)

BY ORDER OF

DIRECTOR OF HEALTH

SAN ANTONIO METROPOLITAN HEALTH DISTRICT
Principles of Modern Quarantine

• Reserved for exposure to highly contagious & dangerous diseases
• Likely to involve small numbers in small areas
• Lasts only as long as necessary
• Does not have to be absolute to be effective

Public good  Individual liberties
The first time one of them sneezes, cut the rope...
SOCIAL DISTANCING (a/k/a “shelter in place” or “snow days”)

• Alternative to quarantine: “reverse quarantine”
  – Persons not exposed remove themselves from the general population to avoid any exposure to individuals who are infected
  – Applied at the community level
    • Businesses are closed or workers perform duties from home
    • Public events and gatherings, including sports events and school, are cancelled
    • Public transit is closed or scaled back
Isolation & Quarantine

Federal Legal Authority

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Federal Isolation and Quarantine: Apprehension

Commerce Clause

Director of Health and Human Services may authorize the detention of an individual, if:

- The individual is reasonably believed to be infected with “quarantinable” disease and is preparing to move from one state to another state, AND;
- The individual is reasonably believed to be a source of infection to others moving between states.
- -- (42 C.F.R. 70.6(a))
Federal Isolation and Quarantine: Diseases

- Federal Quarantine authorized for communicable diseases designated in Executive Orders (42 U.S.C. 264(b); 42 C.F.R. 70.6, 71.32(a)):
  - Cholera
  - Diphtheria
  - Infectious Tuberculosis
  - Plague
  - Smallpox
  - Yellow Fever
  - Viral Hemorrhagic Fevers
    - Lassa
    - Marburg
    - Ebola
  - SARS
  - Influenza caused by novel or reemergent viruses that are causing, or have the potential to cause, a pandemic

-- Per EO 13295 (4/4/03), as amended, 4/1/05.
Federal Isolation and Quarantine: Order Requirements

- Federal order authorizing interstate quarantine, isolation, or conditional release must be:
  - In writing
  - Signed by the Director
  - Contain the following information
    - Identity of individual or group
    - Location of quarantine
    - Explanation of both reasonable belief for disease and that individual is moving between states
    - Explanation that order will be reassessed no later than 72 hours after service
- Must be served on individual no later than 72 hours after apprehension

-- (42 C.F.R. 70.14)
Federal Isolation and Quarantine: Medical Review

Director shall, as soon as practicable, arrange for medical review of individual in quarantine.

Medical review shall be conducted by telephone, audio or video conference.

-- 42 C.F.R. 70.16
Federal Isolation and Quarantine: Penalties

Violation that does not result in death = no more than $100,000 or one year in jail, or both

Violation that does result in death = no more than $250,000 or one year in jail, or both

-- 42 C.F.R. 70.18
Isolation & Quarantine

Illinois Legal Authority
Isolation & Quarantine: State Legal Authority

**Department of Public Health Act**
- (20 ILCS 2305)
- Gives broad authority to IDPH to prevent or suppress the spread of dangerously contagious and infectious disease

**Control of Communicable Diseases Code**
- (77 Ill. Adm. Code 690)
- Outlines procedures for implementation of isolation, quarantine, closure and other public health orders
Ebola Healthcare Facilities & Resources
Isolation & Quarantine: State Legal Authority

- IDPH’s General Public Health Powers
  - Supreme authority in matters of quarantine and isolation.
  - General supervision of interests of health and lives of people of Illinois.
  - Broad rulemaking authority for preservation and improvement of the public health.
Isolation & Quarantine: State Legal Authority

Voluntary Compliance
- When a person voluntarily complies with IDPH recommendations for control of a communicable disease -- No additional intervention is necessary
- Law/regulations designed to address situations where voluntary compliance fails, and are extraordinary measures
Isolation & Quarantine: State Legal Authority

• Delegation and Enforcement
  – IDPH may delegate its duties to certified local health departments when IDPH makes the determination that such delegation is necessary.
  
  – All local boards of health, health authorities and officers, police officers, and employees of the state or any locality have power to enforce orders issued by IDPH.

• Violation of IDPH orders constitutes a Class A misdemeanor.
PARTNERSHIP IS CRUCIAL
Isolation & Quarantine: State Legal Authority

- IDPH may issue immediate orders for isolation and quarantine
  - Without prior consent or court order
  - When in reasonable judgment of IDPH immediate action is required to protect the public from a dangerously contagious or infectious disease.
  - As soon as practicable, within 48 hours after issuing order, IDPH must:
    - Obtain consent; or
    - File a petition requesting a court order
To Obtain a Court Order the Department Must:

- Prove by clear and convincing evidence that public’s health and welfare are significantly endangered by a person.
- All other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists.
Other Related Powers

- Orders for physical examination, testing, collection of laboratory specimens, vaccinations, medications, other treatments, & observation & monitoring.

- Individual has right to refuse to consent.
  - If individual refuses (and it is uncertain if individual is exposed or infected), individual may be subject to isolation or quarantine.

- Right to counsel if subject to isolation or quarantine
Isolation & Quarantine

Decision Protocols
Key Considerations for Isolation/Quarantine/Closure

- Dangerously contagious and infectious disease
- Medical analysis warrants containment
- Implementation and maintenance feasible
- Ab to determine who should be contained
- Resources available to support and enforce containment
- Can the person be confined for incubation period?
- Potential benefits outweigh possible adverse consequences
Decision Protocols

Physician identifies possible candidates for isolation, quarantine, etc., and contacts the Local Health Department (LHD).

LHD confers with the physician in regard to protocols for disease and inquires about patient’s attitude for voluntary isolation, quarantine, etc.

LHD informs local emergency preparedness authorities who then contact the Department during work hours or IEMA.
LHD, upon consultation with Department, contacts local legal authorities (e.g., State’s Attorney) and law enforcement as indicated by scope of event.

Department and LHD will consult the isolation, quarantine and closure protocols in place and will coordinate the issuance of any appropriate orders.

LHD will provide on-going patient follow-up and monitoring to ensure compliance.
2015: Necessary precautions during an Ebola outbreak in Liberia

UN Photo/Martine Perret
Isolation, Quarantine & Closure

Control of Communicable Diseases Code
Control of Communicable Diseases Code (77 Ill. Adm. Code 690)

• Issues Addressed:
  – Investigation and Enforcement
  – Notice
  – Voluntary v. Involuntary
  – Right to Counsel
  – Least Restrictive Means
    • Tied to particular circumstances
    • Have scientific basis
  – Orders and Procedures for isolation, quarantine and closure
Investigations

- Department or LHD shall conduct investigations to confirm the diagnosis, treatment and causes of dangerously contagious and infectious diseases
  - Review of relevant medical records
  - Interviews
  - Medical examinations
  - Collect environmental samples
  - Entering a place of employment to conduct investigations
Conditions and Principles

- By least restrictive means necessary to prevent spread of disease
- Health status of affected persons to be monitored regularly
- Released as soon as no longer a threat
- Cultural and religious beliefs should be considered
- Notice provided to reasonable number of persons that an individual is subject to an order
Order and Procedure

- May issue Order for isolation, quarantine or closure on immediate basis without prior consent or court order.
- Must first make documented efforts to obtain voluntary compliance.
- Immediate order not to exceed period of incubation.
- Powers of law enforcement may be requested in order to enforce a public health order for Isolation, Quarantine or Closure.
Written Order Requirements

- Identity of persons
- Premises
- Notice of right to counsel
- If indigent, counsel will be appointed
- Reason for Isolation, Quarantine or Closure
- Anticipated duration
- How attempted to obtain voluntary compliance
- Medical basis on which order is justified
Verbal Orders

Verbal order may be issued if the delay in imposing written order would jeopardize the ability to prevent transmission.

Valid for 24 orders and followed up with a written order.

Continued beyond initial 24 hour period only if written order issued.
Court Order Petition

- Petition for Court Orders:
  - File petition with court within 48 hours
  - Petition must include same items as detention order
  - Include attestation
  - Be served of notice of hearing at least 24 hours before the court hearing
Isolation or Quarantine Premises

Health care providers allowed access to meet needs

Sites to be prominently placarded with signs

Persons who enter premises may themselves be subject to isolation or quarantine
Summary

Isolation and quarantine is only one aspect of communicable disease control.

Voluntary compliance with isolation, quarantine and closure is extremely important.

Collaboration with our federal partners, other states and especially our partners in local jurisdictions is ESSENTIAL.
THANK YOU

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Questions?
Information Sharing 101: Protecting Public Health Data
• December 12, 2019
• 2:00 pm – 3:30 pm ET

Register at:
http://www.nga.org/ph-emergency-prep-toolkit/#webinar