

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

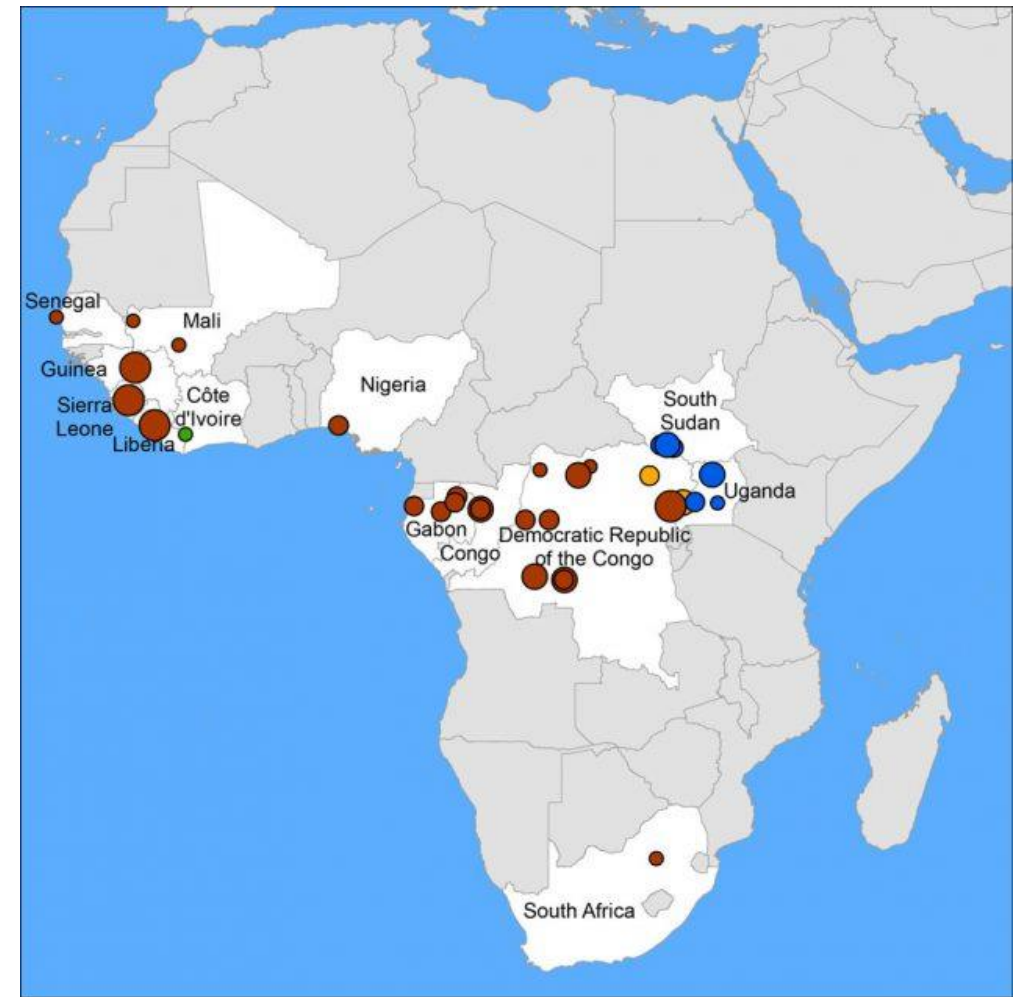
Henry Walke, MD
Incident Manager
CDC 2018 Ebola Response

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



Species

- Zaire ebolavirus
- Sudan ebolavirus
- Taï Forest ebolavirus
- Bundibugyo ebolavirus

Number of Cases

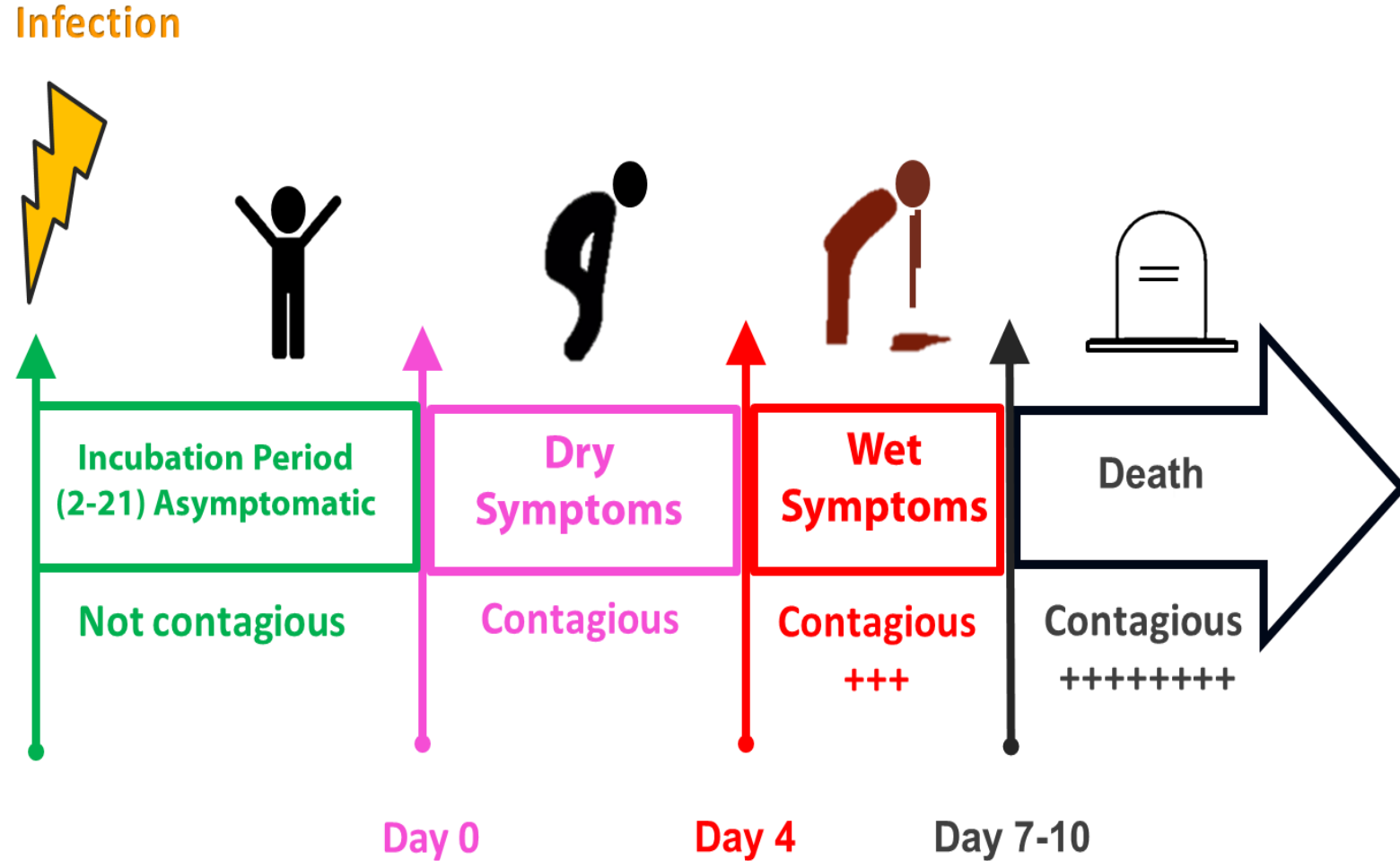
- 1 - 10
- 11 - 100
- 101 - 425
- Greater than 425

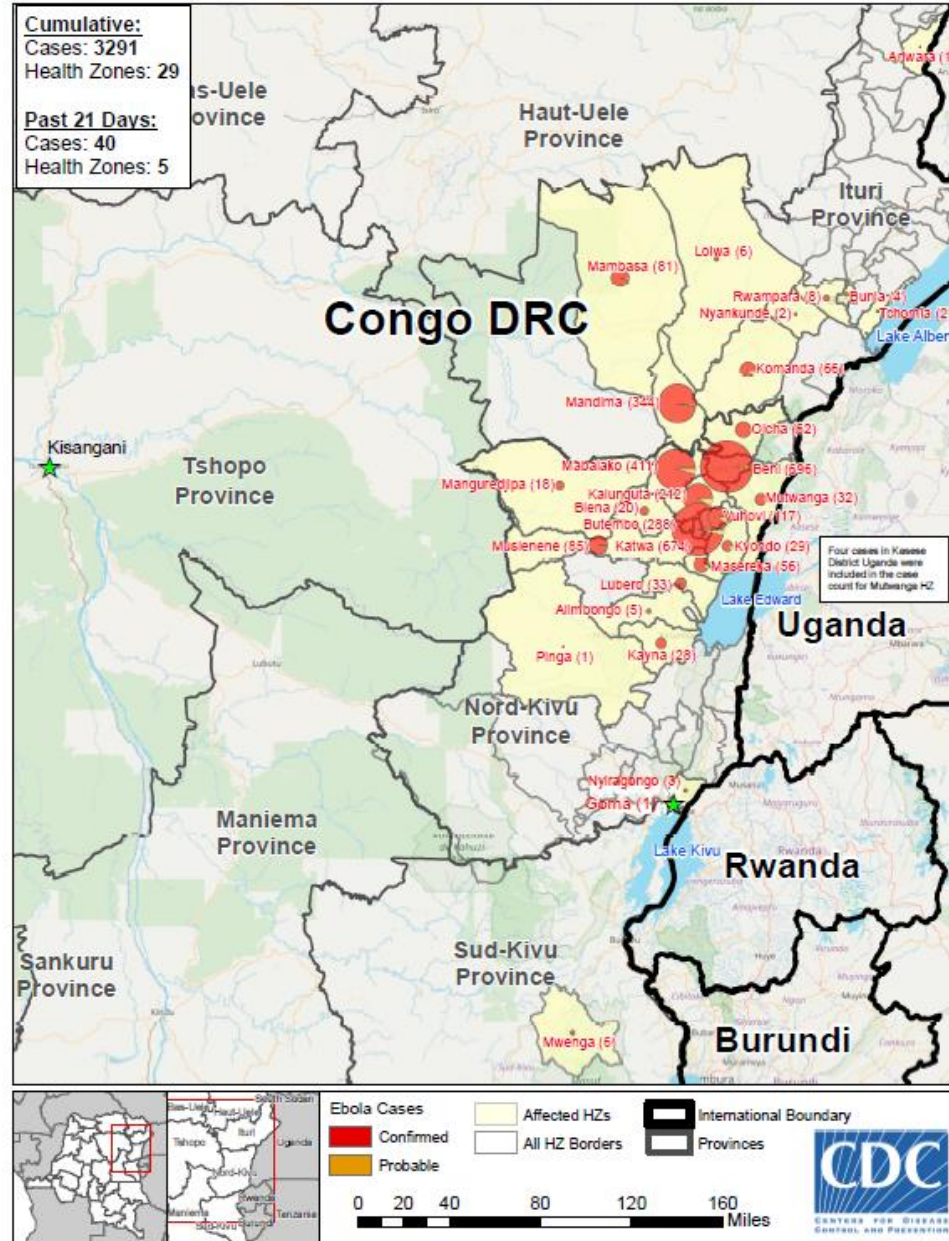


0 250 500 1,000 Miles

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

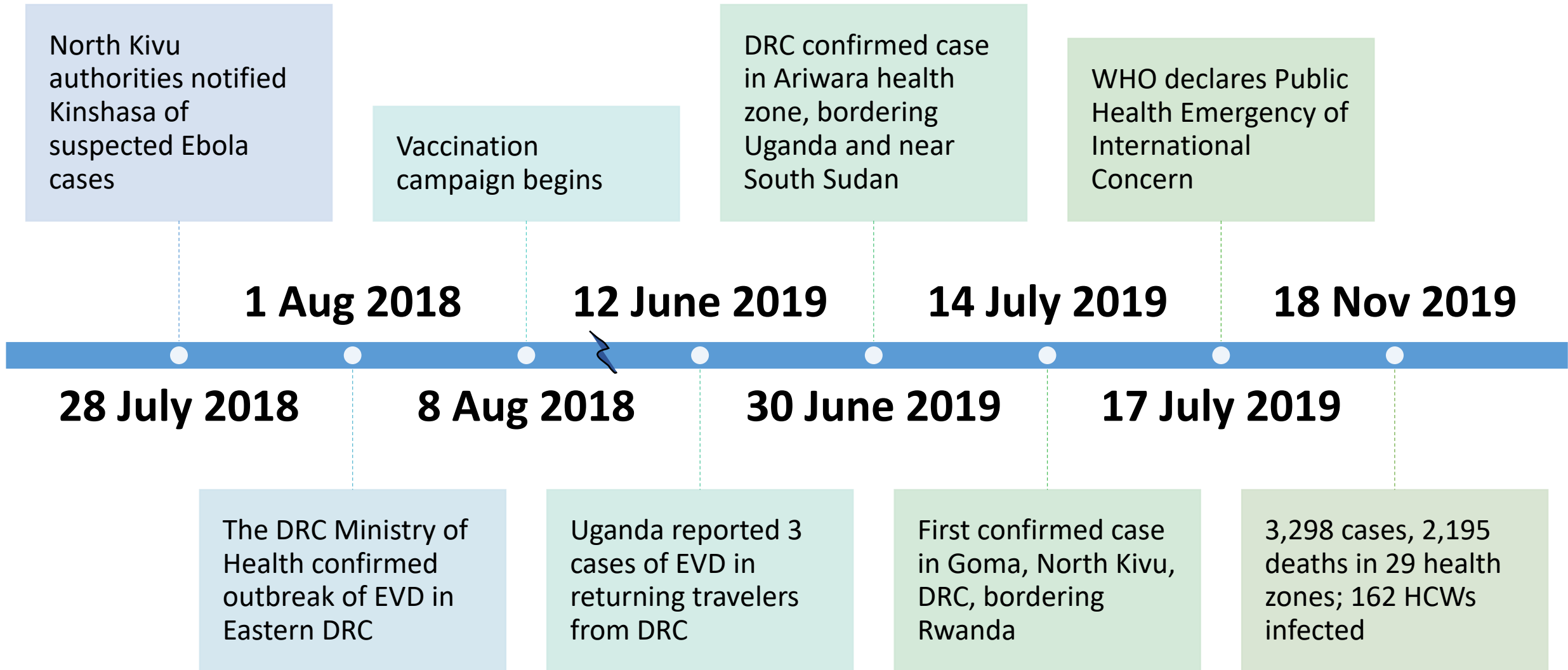




2018 Ebola Outbreak in Eastern Democratic Republic of Congo (DRC)

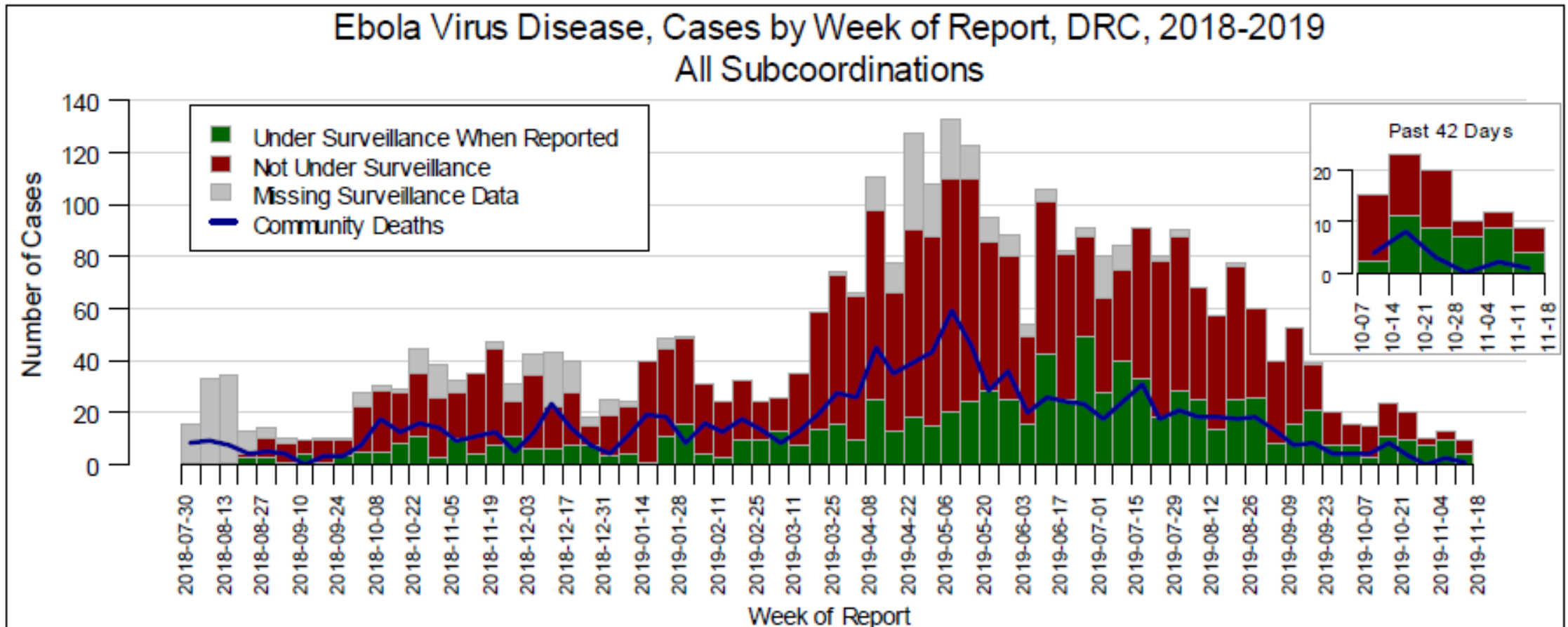
- Second largest Ebola outbreak ever recorded
- Largest outbreak in DRC
- Identified August 2018
- Regional security issues and cross border movement add to complexity

Outbreak Timeline



Ebola outbreak as of November 20, 2019:

3298 cases, 2195 deaths, 162 health care worker infections



Public Health Fundamentals to Stop Ebola

Epidemiology

- 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.

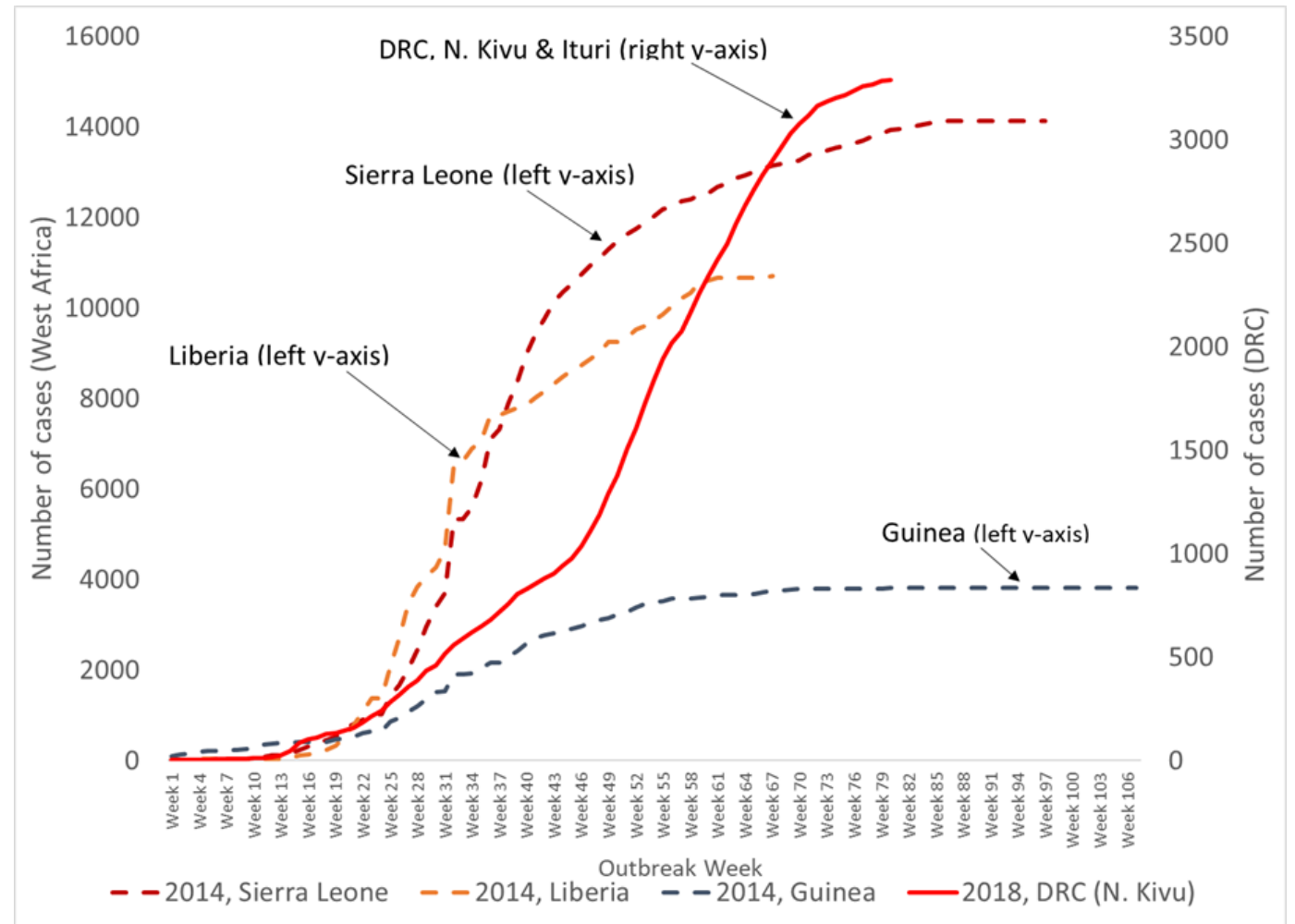


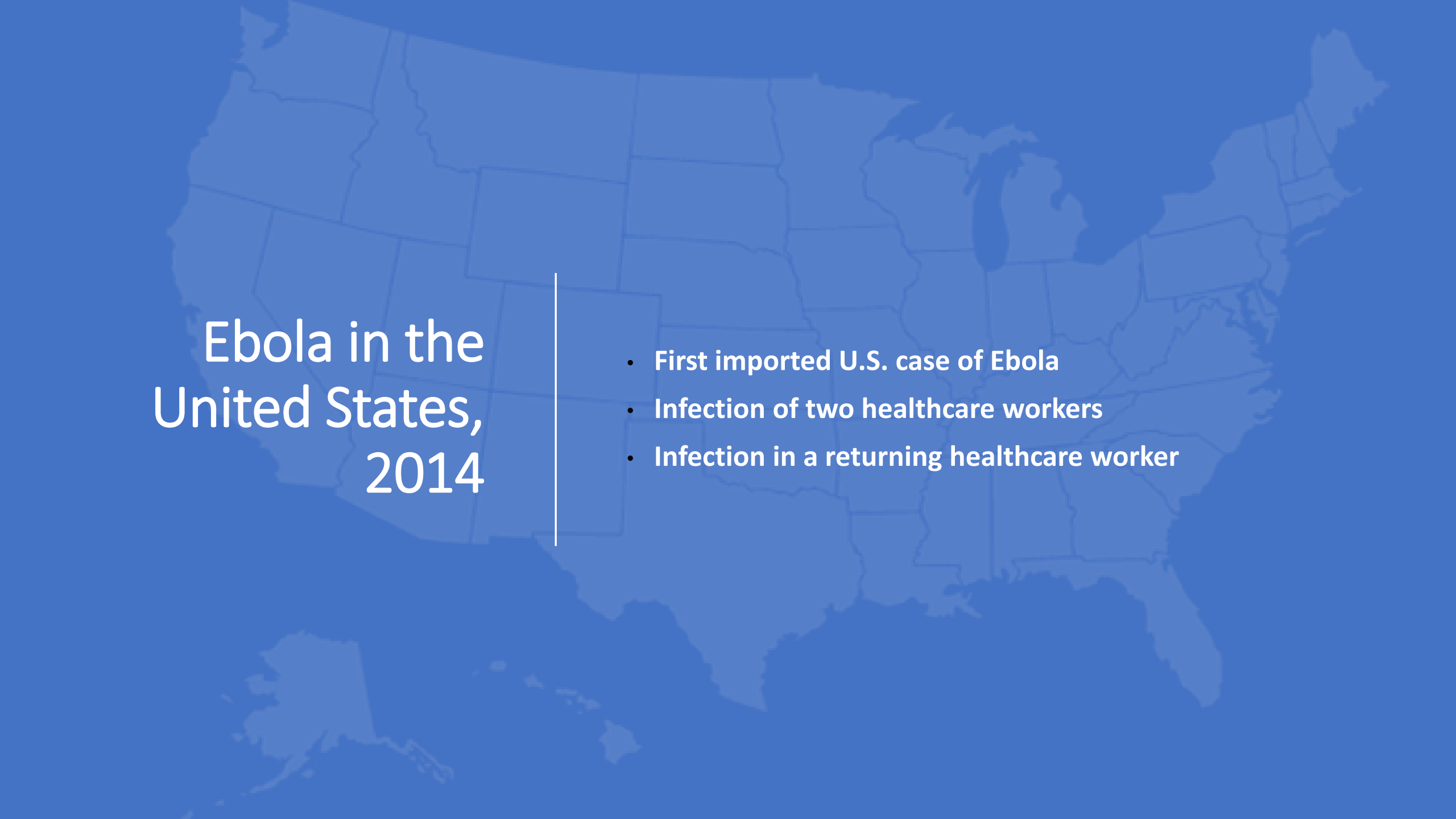
Therapeutics

- 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 risks.

- 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 uncertain control measures (Guinea, Liberia, Sierra Leone, or Mali) within the last 21 days

OR

- Contact with someone with Ebola within the last 21 days

AND

- Had a fever at home, or has a current temperature $\geq 100.4^{\circ}\text{F}$ ($\geq 38^{\circ}\text{C}$)
- Other symptoms:
 - Severe headache
 - Muscle pain
 - Weakness
 - Fatigue
 - Diarrhea
 - Vomiting
 - Abdominal (stomach) pain
 - Unexplained hemorrhage (bleeding or bruising)
- If the patient has both exposure 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/szgB>
- 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/szYA>


INFORM

Alert others, including public health authorities.

- Notify your facility's infection control program and other appropriate staff
- Contact your 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 numbers, visit: <http://go.usa.gov/f74V>

For more information, visit: www.cdc.gov/vhf/ebola/hcp

Revised 10/2014



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

- CDC Travel Health Notice for Ebola in the Democratic Republic of Congo (<https://wwwnc.cdc.gov/travel/notices/alert/ebola-democratic-republic-of-the-congo>)
- 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)
TTY: 1-888-232-6348 www.cdc.gov

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

General Counsel
Illinois Department of Public
Health





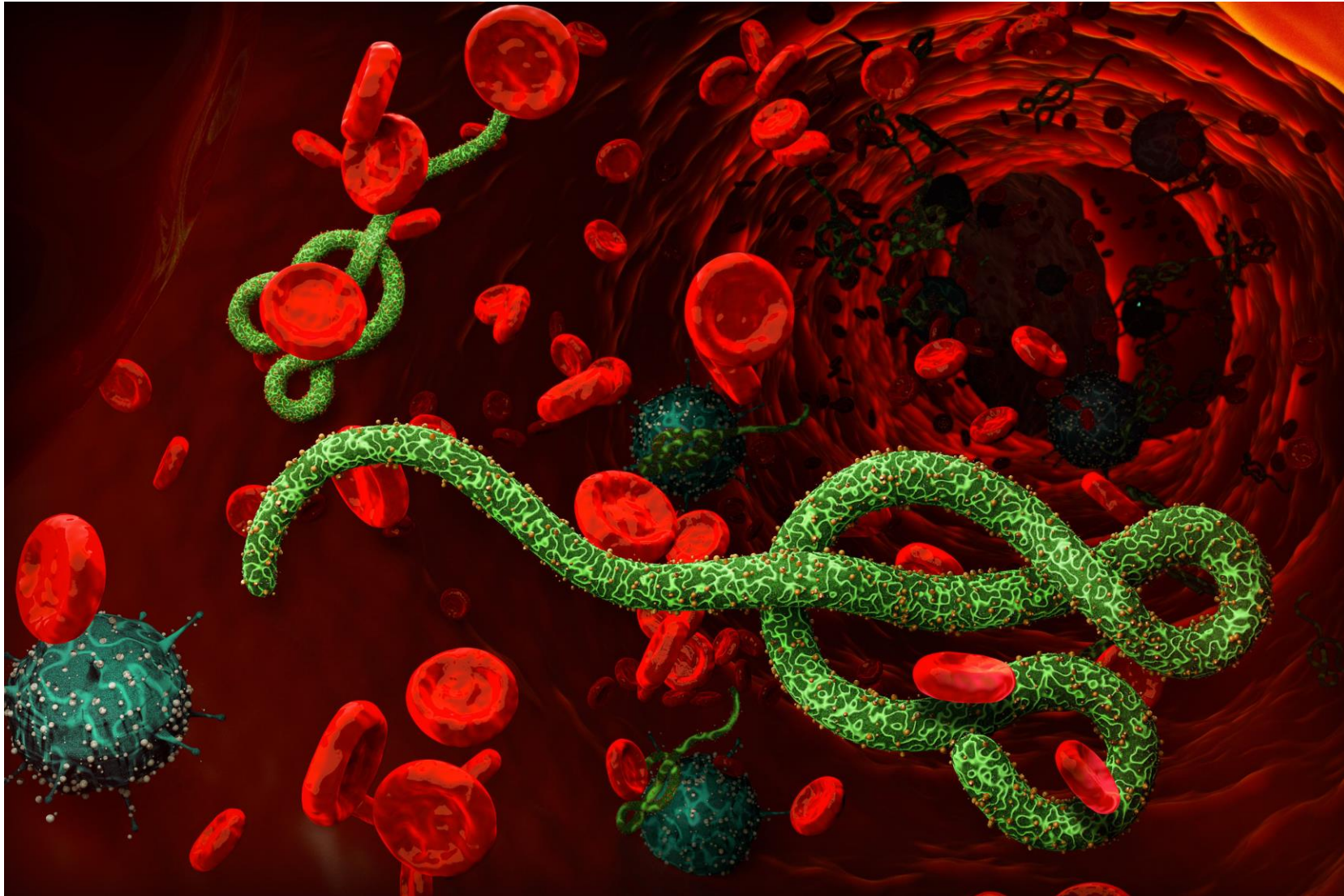
IDPH

ILLINOIS DEPARTMENT OF PUBLIC HEALTH

**Ebola and
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**Snigdha Acharya, J.D.
General Counsel**

11/21/2019



Roadmap

Isolation, Quarantine & Closure

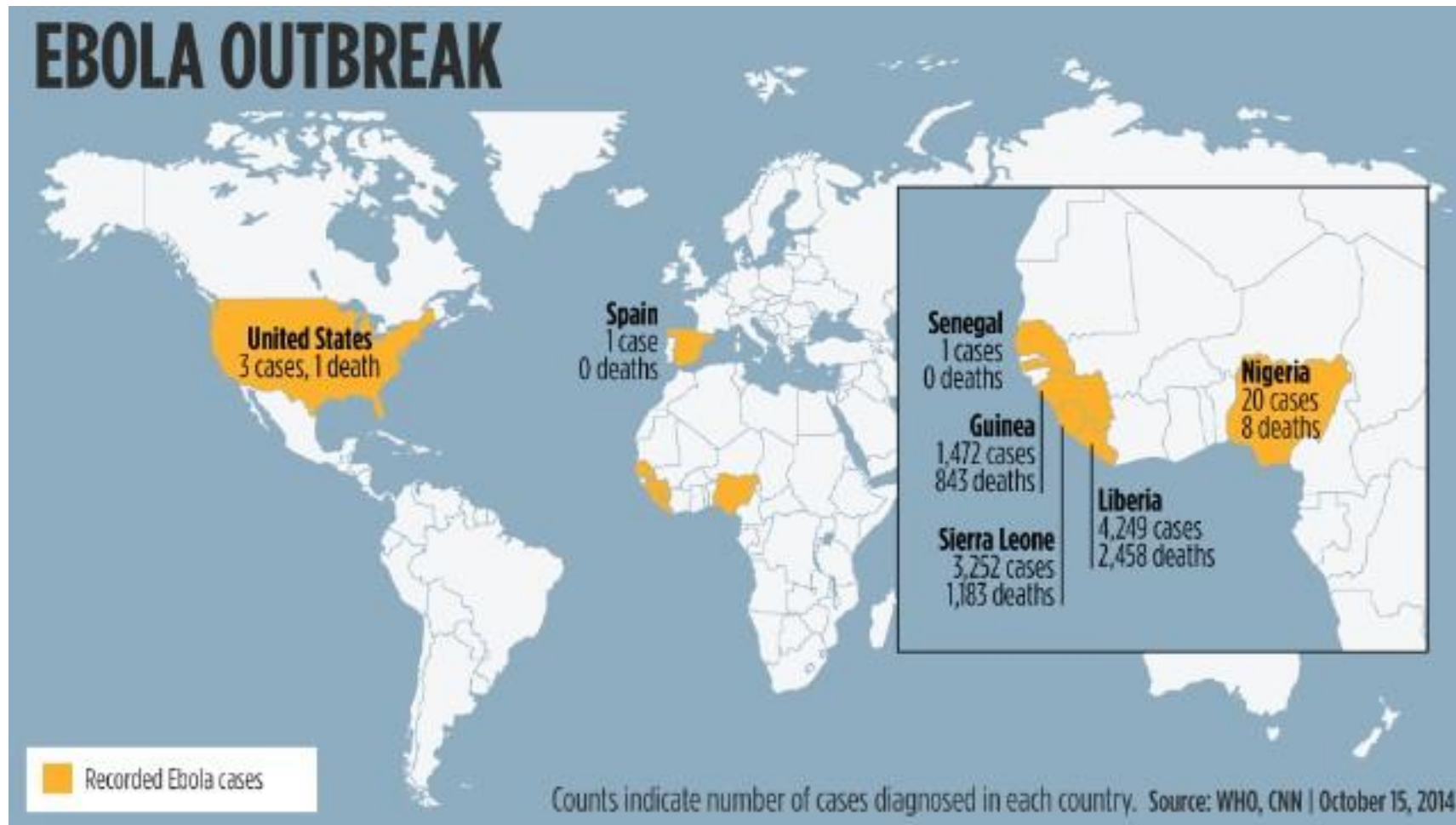
General Legal Principles
and Definitions

Federal Legal Authority

Illinois Legal Authority

Reality of Decision
Protocols

EBOLA OUTBREAK



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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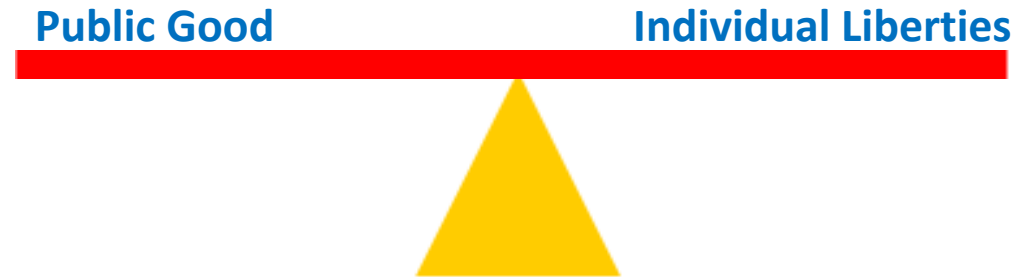


Fundamental Legal Principles

- 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 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

QUARANTINE

- 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

Public good

Individual liberties



- 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

STAR TRIBUNE
SACK



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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JOHN WESSELS/GETTY IMAGES

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

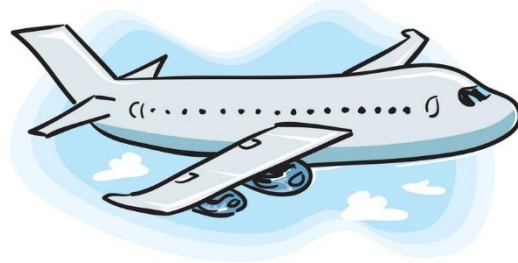
Violation that does not result in death = no more than \$100,000 or one year in jail, or both

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

-- 42 C.F.R. 70.18



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O'Hare International Airport

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Isolation & Quarantine

Illinois Legal Authority





Doctors Without Borders

Isolation & Quarantine: State Legal Authority

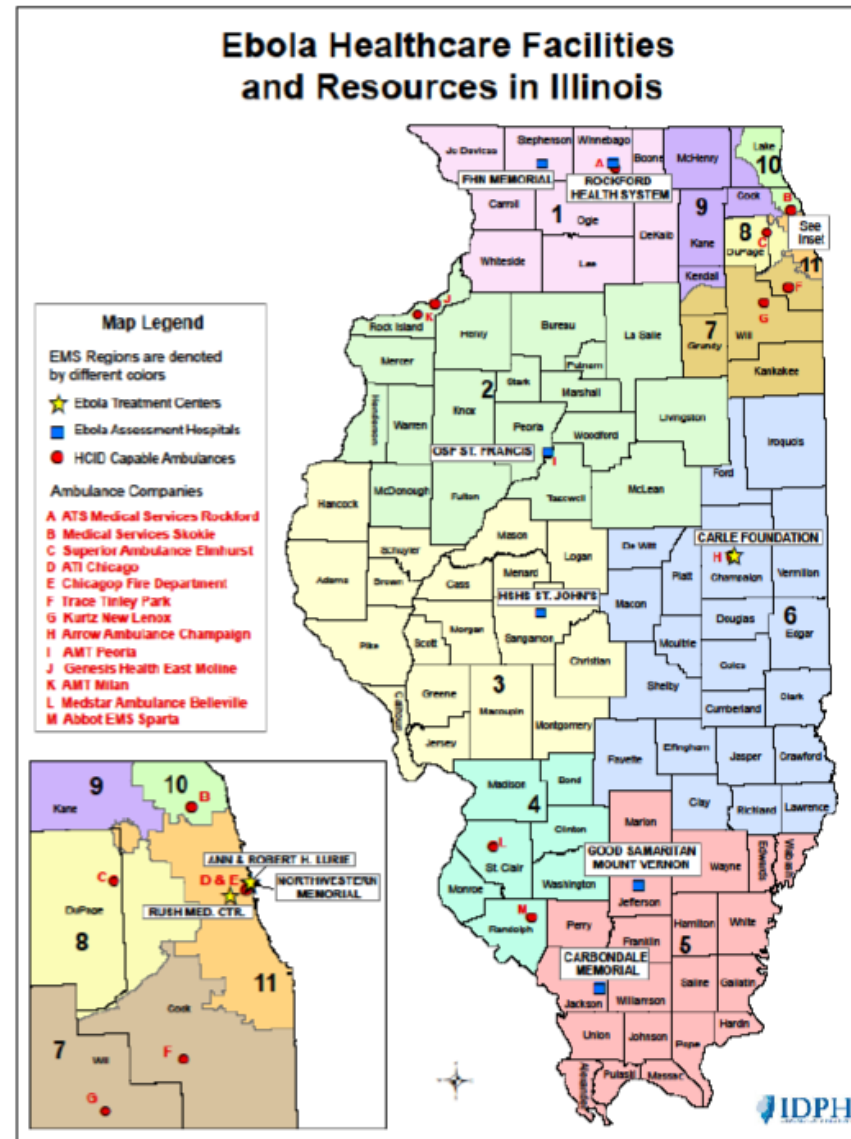
Department of Public Health Act

- (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



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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.

Decision Protocols

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

SNIGDHA ACHARYA, J.D.
ILLINOIS DEPARTMENT OF PUBLIC HEALTH
122 S MICHIGAN AVE, 7TH FLOOR
CHICAGO, IL 60603
(312) 814-6033
SNIGDHA.ACHARYA2@ILLINOIS.GOV

WWW.DPH.ILLINOIS.GOV

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>



**Upcoming
Webinar
in the Series**