



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 A2

Checklist of Legal Considerations for SARS Preparedness in Your Community

The global emergence of SARS-CoV presents challenges to the public health system at all levels of government. If SARS-CoV transmission recurs, the potential exists for implementation of isolation and/or quarantine within a given community. There is great variation among state and local laws regarding compelled isolation and quarantine.

The following checklist is a planning tool for lawyers highlighting the relevant partners, resources, planning considerations, due process considerations, and issues of legal liability and immunity that may arise in the context of any public health emergency whether natural or manmade. This checklist specifically addresses SARS. Next to each consideration are listed the legal partners (e.g., public health, hospitals, public safety, emergency management, judiciary) who may be called upon to address these considerations as part of the affected community's response. The challenge of the public health response is to protect the health of many, while safeguarding the rights of the individual. An integrated and coordinated response by attorneys at all levels in the community is essential to achieving this goal.

The checklist format is not intended to set forth mandatory requirements or establish a national standard for legal preparedness. Rather, each state and local jurisdiction should determine for itself whether it is adequately prepared for disease outbreaks in accordance with its own laws and procedures.

Planning Considerations

- Ensure that public health personnel have a basic understanding of the **intersection among federal, state, and local laws** regarding quarantine and isolation as they relate to international airports and interstate border crossings. [public health/public safety/emergency management]
- Where applicable, draft legal orders, motions, and templates authorizing **medical evaluation of non-compliant persons** who meet the SARS case definition and have symptoms of SARS-CoV disease. [public health/hospitals]
- Ensure that legal counsel has reviewed the feasibility of requiring persons to **self-monitor for medical conditions** (e.g., temperature checks) and (where applicable) drafted legal orders or agreements. [public health]
- Ensure that legal counsel has reviewed the feasibility of issuing **"exclusion" orders** (i.e., excluding contacts from using public transportation, attending public meetings) and, where applicable, drafted templates and legal orders. [public health/public safety/emergency management]
- Ensure the existence of a statute, regulation, or other administrative mechanism authorizing SARS isolation/quarantine. [public health/public safety/judiciary]
- Draft legal orders, motions, and templates for isolation/quarantine in **homes, hospitals, or other designated facilities**. [public health/hospitals/emergency management/public safety]

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- Ensure that legal counsel has reviewed the feasibility of using **electronic methods to monitor** suspected non-compliant individuals in home isolation and/or quarantine. [public health/public safety]
- Ensure that legal counsel has reviewed draft legal orders, motions, and templates to **quarantine facilities** and to credential ingress and egress into such facilities. [public health/public safety/emergency management]
- Ensure that legal counsel has reviewed the feasibility of using **faith-based organizations** to assist or provide services to persons in isolation and quarantine. [public health]
- Ensure that public health officials have reviewed the availability of workers' compensation and/or other forms of **financial support** for persons unable to return to work because of a isolation/quarantine order. [public health]
- Ensure that legal counsel has considered whether the health department should issue documents designed to assist with **reintegration of persons** subject to isolation/quarantine order (e.g., letter to employer or school explaining that patient is no longer infectious). [public health]
- Ensure that legal counsel has reviewed agreements relating to **overtime and/or flexibility of hours** for staff during public health emergencies. [public health/hospitals/public safety/emergency management]
- Ensure that legal counsel has a clear understanding of legal authorities relevant to **environmental remediation** of buildings. [public health/hospitals/emergency management]

Partnerships/Outreach

- Assemble a **legal preparedness task force** with representation from public health, public safety, hospitals, emergency management, judiciary, and other relevant individuals and/or organizations at various levels of authority (federal, state, local, cross-border). [public health/public safety/hospitals/emergency management/judiciary]
- Establish procedures for **enforcement of isolation/quarantine orders**. [public health/public safety]
- Provide public safety personnel with **educational materials** relating to SARS and have a clear understanding for how to enforce an isolation/quarantine order. [public health/public safety]
- Ensure that procedures or protocols exist between hospitals and public health to manage a possible or known SARS case-patient who attempts to **leave the hospital against medical advice**. [public health/hospitals/public safety]
- Where applicable, draft memoranda of agreement (MOA) or understanding (MOU) to allow for the **loaning of facilities or other services** necessary to implement a quarantine and/or isolation order for person who cannot be isolated at home (e.g., travelers, homeless populations). [public health/hospitals/emergency management]
- Ensure that judges and attorneys in the area, through **local bar organizations** or other entities, have received educational materials, training, or information related to SARS and the potential use of isolation/quarantine to interrupt disease transmission. [public health/judiciary]
- Ensure that legal counsel has reviewed and/or drafted **data sharing/data use/confidentiality agreements** related to sharing of confidential patient medical information between public health and other partners. [public health/hospitals/public safety/emergency management]
- Consider the implementation of a **"Forensic Epidemiology" training course** in the jurisdiction. [public health/public safety]

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Due Process Considerations

- ❑ Draft legal orders and templates using terms such as “quarantine,” “isolation,” and “detention” **consistently**. [public health/judiciary]
- ❑ Ensure that legal counsel has reviewed all draft isolation/quarantine orders and forms, as well as applicable administrative hearing procedures, to ensure concurrence with **basic elements of due process** (e.g., adequate notice, opportunity to contest, administrative determination) [public health/judiciary]
- ❑ Ensure that procedures or protocols exist to ensure that persons subject to an isolation/quarantine order have **access to legal counsel**, if desired (e.g., list of attorneys willing to provide services at little or no cost). [public health/judiciary]
- ❑ Ensure that legal counsel has analyzed procedures needed to satisfy **due process** in **different isolation/quarantine scenarios** (e.g., “voluntary” home isolation, isolation in a guarded facility, exclusion from certain public activities). [public health/judiciary]
- ❑ Where applicable, ensure that public health officials have worked with the local court system to develop a 24/7 **“on call” list of judges or hearing officers** to review emergency requests for isolation/quarantine. [public health/judiciary]
- ❑ Ensure that public health officials have worked with the local court system to develop a **plan for hearing cases and/or appeals** for persons subject to isolation/quarantine orders (e.g., participation via telephone, video conference). [public health/judiciary]

Legal Resources and Statutes

- ❑ Ensure that legal counsel has reviewed and has a clear understanding of the **legal resources and tools** relevant to a community’s public health response. [public health/judiciary/emergency management]
Such resources and tools include:
 - Draft Model State Emergency Health Powers Act
www.publichealthlaw.net/MSEHPA/MSEHPA2.pdf
 - Emergency Management Assistance Compact (model agreement)
www.emacweb.org/EMAC/About_EMAC/Model_Legislation.cfm
 - Emergency Management Assistance Compact (as implemented in a state or jurisdiction)
 - Memorandum of Understanding for Establishment of Local Public Health Mutual Aid and Assistance System
www.publichealthlaw.net/Resources/ResourcesPDFs/MOU.pdf
 - American Bar Association Draft Checklist for State and Local Government Attorneys to Prepare for Possible Disasters
www.publichealthlaw.net/Resources/ResourcesPDFs/ABA_checklist.pdf
 - Buncombe County Health Center Forensic Epidemiology Quarantine Task Force Report
www.phppo.cdc.gov/od/phlp/ (to be posted)
 - Communicable Disease Control Measures in Texas: A Guide for Health Authorities in a Public Health Emergency
www.tdh.state.tx.us/ophp/phwd/commdis.htm.Additional materials and resources may be posted at www.phppo.cdc.gov/od/phlp/
- ❑ Distribute draft letters or fact sheets to hospitals and other healthcare providers describing permissible uses and disclosures of health information for public health purposes under the **Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA)** (www.hhs.gov/ocr/hipaa/). [public health/hospitals]

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- ❑ Where applicable, ensure that legal counsel understands procedures for **declaring a public health emergency** (at various levels of government) and consequences of such a declaration. [public health/public safety/emergency management]
- ❑ Ensure that legal counsel is familiar with the requirements of the **Emergency Medical Treatment and Active Labor Act (EMTALA)** (www.aaem.org/emtala/index.shtml) and has determined if such requirements have been incorporated into public health and hospital planning for SARS. [public health/hospitals]
- ❑ Ensure that legal counsel has reviewed **hospital screening and admission procedures** for potential SARS patients (e.g., establishment of evaluation clinics for persons with SARS-like symptoms) for compliance with **EMTALA** [public health/hospitals]
- ❑ Ensure that legal counsel has reviewed potential **EMTALA** implications of a **community-wide EMS protocol** for transport of SARS patients (e.g., protocol requiring transport of SARS patients to a hospital or facility other than the hospital that owns the ambulance). [public health/hospitals/emergency management]

Legal Liability and Immunity

- ❑ Ensure that legal counsel has reviewed the potential legal liability of implementing **“working” quarantine for essential service personnel**. [public health/hospitals]
- ❑ Ensure that legal counsel has reviewed the potential legal liability of housing SARS patients in **home isolation with non-exposed residents** subject to infection control precautions. [public health]
- ❑ Ensure that legal counsel has reviewed liability/immunity for **volunteers** providing assistance or services to persons in isolation/quarantine. [public health/emergency management]

For more information, visit 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)