

Social Distancing Law Project

Michigan Department of Community Health

After Action Report

Introduction

The Michigan Department of Community Health (MDCH) agreed to participate in the Social Distancing Law Project (SDLP). The SDLP is an activity of the Association of State and Territorial Health Officials (ASTHO) in cooperation with the Centers for Disease Control and Prevention (CDC).

The SDLP is intended to assist selected states with assessing their legal preparedness to implement social distancing measures in both declared and undeclared public health emergencies. Specifically, the SDLP seeks to ensure the presence of effective legal authorities for social distancing measures, to establish and sustain the competencies of public health professionals to apply those laws, to provide coordination of such efforts across jurisdictions and sectors, and to make accessible information about best practices.

Michigan's Participation

MDCH established a project team responsible for carrying out activities of the SDLP. This project team included representatives from relevant areas of MDCH (epidemiology, surveillance, emergency preparedness, legal), the Michigan Department of Attorney General, and the Officer in Charge of the CDC Quarantine Station. The Project Team prepared a report assessing the adequacy of Michigan law to implement social distancing measures both during and in the absence of a declared emergency, provisions for inter-jurisdictional cooperation for restricting the movement of persons, and mass prophylaxis readiness. It also organized and oversaw the legal consultation meeting.

Legal Consultation Meeting

MDCH hosted a legal consultation meeting (LCM) on October 12, 2007, at the Detroit Metropolitan Airport Westin. This site was chosen because it and the federal Quarantine Station are both located at the airport's McNamara International Terminal. LCM participants were provided with an opportunity to sign up for a tour of the quarantine station and associated screening areas at the airport led by the Quarantine Officer, Gabriel Palumbo, and the Medical Director, Curie Kim, M.D. Tours were provided to approximately twelve participants. Locating the LCM at Detroit Metropolitan Airport resulted in participation by the Wayne County Airport Authority, the Travel Security Association (TSA), and their legal counsel. Their participation was very important since the hypothetical scenario included legal issues related to the arrival of two international

flights with passengers potentially infected with, and exposed to, pandemic influenza. Meeting at the international terminal of Detroit Metropolitan Airport also imparted a sense of reality and urgency to the scenario.

Peter Jacobson, Professor of Health Law and Policy, and Director of the Center for Law, Ethics, and Health at the University of Michigan School of Public Health, moderated the LCM. Richard Goodman, Director, Public Health Law Program, CDC, and Janet Olszewski, Director, MDCH, opened the LCM with their welcomes. Director Olszewski was able to join the LCM for the morning session. As shown by the list of attendees, the group was diverse with expertise and perspective in many relevant areas of public health, emergency management, legal, and individual rights.

The morning focused on providing information about Michigan and federal law that governs implementation of social distancing measures. The afternoon was conducted as a tabletop using a hypothetical scenario that was based on the scenario provided in the SDLP guidance document. Break-out groups were used to discuss the scenario, consisting of eight tables of 7-8 individuals. Individuals were assigned to tables to ensure a mix of disciplines at each table, and included a legal expert and public health expert at each table. Facilitators were appointed prior to the LCM, and provided with the scenario and instructions. Scribes were chosen by the 7 – 8 participants at each table. All participants were provided with the scenario and potential discussion questions in advance of the LCM.

Each participant was provided with a notebook at the beginning of the LCM that included:

- Meeting agenda
- List of LCM participants
- Speakers biographical statements
- Presentations on the law
- Situation manual related to the tabletop, including goal, objectives, assumptions, the hypothetical scenario, and questions related to the scenario
- Resource materials
- Evaluation

These materials are being provided in electronic form with this after action report.

Discussion questions were divided into three sets, focusing on the following three parts of the scenario:

1. Actions and responses related to the increase of influenza-like illness in Michigan.
2. Actions and responses related to the impending arrival of two international flights with passengers who may be infectious with, and passengers and crew potentially exposed to, avian influenza.

3. Responses and measures related to private and public gatherings in order to control the spread of pandemic influenza.

Between each segment, Professor Jacobson moderated discussion of the group as a whole about the sufficiency of the law, questions, and concerns that need to be addressed. Additional feedback was obtained by note cards completed at tables as issues arose, evaluations that were completed by participants, and information collected by experienced evaluators who observed the exercise and filed an after action report with the Department of Homeland Security.

Talking points captured during discussions

The following points were captured during the table and group discussions for each question set:

1. Actions / considerations to respond to the increase of influenza-like illness in Michigan.
 - a. Personal protective equipment (PPE)
 - b. Infection control procedures
 - c. Laboratory testing; importance of case definition
 - d. HAN alerts to hospitals, health departments, primary care, etc.
 - e. School closing – Thanksgiving holiday
 - f. Protection of healthcare response teams
 - g. Public communications
 - h. Control of supplies – antivirals, etc
 - i. Be overly cautious
 - j. Voluntary isolation and quarantine
 - k. Warning letters
 - l. Public health advisories or warnings about increased risk of infection associated using certain business establishments (e.g. theaters)
 - m. Does this constitute a “significant threat” for MDCH orders?
 - n. Public awareness to cover all groups
 - o. Social distancing order – state gives heads-up to Detroit for possible cancellation of events
 - p. Where do you draw the line for cancellation of events?
 - q. Emergency management would look to MDCH for advice
 - r. Would the government close everything with no exceptions?
 - s. Will an emergency declaration hold up in court? Disaster declaration?
 - t. MDCH in charge at this point

*** ALL FELT THAT THEY HAVE THE LEGAL AUTHORITY TO TAKE ACTIONS THEY FELT APPROPRIATE**

2. Actions / considerations to respond to the impending arrival of two international flights with passengers who may be infectious with, and passengers and crew potentially exposed to, avian influenza.
 - a. Imminent danger declared
 - b. Order quarantine for all passengers
 - c. CDC station will order isolation of ill passengers
 - d. Send locals home with education
 - e. Transients to be housed in designated building
 - f. CDC responsible under federal authority
 - g. Legal authority of quarantine station?
 - h. Can local and state health officials refuse transfer of quarantine and isolation patients in hospitals?
 - i. Legal authority is well defined for international flights

3. Questions and considerations for imposing measures on private and public gatherings in order to control the spread of pandemic influenza
 - a. Need for social distancing at outdoor events
 - b. Supply caution advisories for all outdoor events
 - c. Distinction between public and private gatherings
 - d. Need to define “public gathering” in any order, warning, advisory
 - e. Practicality of implementing, enforcing orders imposing social distancing measures
 - f. Where do public health concerns fit in with political and economic effects?
 - g. What about disproportional impact of certain measures on certain populations (e.g. impact of discontinuing public transportation on people without cars)?
 - h. Need for “social distancing” of employees staffing the Emergency Operations Center and Community Health Emergency Center
 - i. Iceberg effect for decision making (only seeing the tip of the problem)
 - j. What if public PPE is not worn, if required?
 - k. Can local overrule Governor’s Disaster Declaration?
 - l. 28 day declaration – what if legislature is unavailable to extend (due to illness)?
 - m. Need for providing due process to impose social distancing that restricts liberty, deprives individuals of their property

* ALL FELT THAT THEY HAVE THE LEGAL AUTHORITY TO TAKE ACTIONS THEY FELT APPROPRIATE

Participants indicated there is sufficient legal authority to take actions they felt appropriate. However, the following questions were raised about implementation:

1. Can warning notices, or similar notices, be used when the names of individuals within an at-risk group are unknown (e.g. a plane load of passengers)?
2. Can the Governor order certain types of businesses (e.g. grocery stores) to stay OPEN during an emergency?
3. Does the Governor have the legal authority to order a distribution or redistribution of resources prior to a declaration of an emergency or disaster?
4. Do minors have the legal authority to make decisions to enter businesses or attend public gatherings where warnings or cautionary advisories are issued concerning associated dangers? E.g. A public health officer issues warnings that attending theaters, sporting events, etc. may place you at increased risk of infection. Can a minor legally decide to attend? Could a curfew order be issued to address this?
5. Can state or local officials refuse the federal government's request to transfer jurisdiction and responsibility for passengers from an international flight from the federal government to the state or local level? What if sick individuals need to be transported to the hospital for evaluation; can they remain under the federal government's jurisdiction?
6. How would unaccompanied minors, traveling on international flights, be handled? If they were sick, would unaccompanied minors be able to voluntarily choose to go to the hospital?
7. Does the U.S. or Michigan Constitution allow the Governor or health officers to issue orders that prohibit religious gatherings?

Conclusions

I. Michigan has sufficient legal authority to implement social distancing measures.

There was no discussion of gaps in the Public Health Code or other Michigan laws. Rather the discussion was how to implement authority and factors to be considered and balanced for decision making (caution vs. rapid response). Also, the importance of mutual aid agreements and joint planning was emphasized, especially in working with law enforcement.

There are some legal questions related to implementation set out in the section above, which need to be answered. Also, as set out in the written assessment, there are jurisdictional questions related to universities and federal lands that need to be submitted to the Attorney General's office for review.

II. Many key players in a pandemic have insufficient knowledge of Michigan legal authority, and how to use it to prevent the spread of pandemic influenza.

Recommendations were made for further training and education efforts.

III. Many “nuts and bolts” need further consideration and resolution to effectively respond to a pandemic.

A lot of discussion focused on logistics, resources, and practicalities of enforcement. The following are a few examples. The logistics of handling large numbers of people for isolation or quarantine at international borders was discussed. Hospital preparedness is necessary to support large-scale efforts. How to prevent / address refusal by health care workers to provide care to patients with pandemic influenza is a concern. Other issues include transporting sick and exposed individuals, equipping public with PPE such as masks, ensuring equitable access to resources and services, and impact of contractual relationships between hospitals and commercial laboratories.

Financial resources continue as a major concern. This concern is reflected by one of the discussion table’s questions regarding international airline passengers: “Can local and state health officials refuse transfer of responsibility and authority [from federal government] for quarantine and isolation patients in hospitals?”

Follow-Up

MDCH has greatly benefited from its work associated with this project, and the stipend that allowed it to fund the LCM. From the evaluations, it appears that most participants found the information and experience generated from the LCM extremely valuable.

The project team is being reconvened to develop a plan for additional activities to build upon this initial effort. Now that the LCM has been created and tested, it should be shared with health and emergency response staff from other areas of the state served by major airports, including Flint-Saginaw-Midland, Grand Rapids-Kalamazoo, and Traverse City. Additionally, while Michigan law might be sufficient to impose social distancing measures, it is essential that public officials know how to use the law to protect the public’s health. Thus, the project team will also consider taking the LCM to local health department staff and their attorneys, and to judges who would review state actions to control a pandemic. The extent of further activities will depend on identifying resources or partners for funding.

In addition to future LCMs, the project team will review issues and areas of uncertainty identified through this project for follow-up as appropriate.