

## Quarantine & Isolation FAQ

(last edit 11/7/06)

Intended audience: Florida Judges, Lawyers and Law Enforcement

Q: What is the health department authority to quarantine?

A: DOH has independent general authority under state police powers to “[d]eclare, enforce, modify, and abolish quarantine of persons, animals, and premises as the circumstances indicate.” Sec. 381.0011(6), F.S. DOH is also required to adopt rules about situations and procedures where quarantine is necessary to stop the spread of communicable disease or to protect the public health from unsafe conditions. DOH routinely quarantines dogs, raccoons and other animals to prevent spread of rabies to humans. DOH has not quarantined a human in Florida [under its general quarantine authority](#) since 1947.

Q: What is ‘quarantine?’ What is ‘isolation?’

A: General answer: We quarantine people who are exposed; we isolate people who are ill.

Specific answer: Under Florida law, DOH has power to quarantine, which includes restricting movement of people and animals, closure of premises, testing, treatment, vaccination, destruction, and disinfection – it also includes isolation. Sec. 381.0011(6), F.S.; Rule 64D-3.007(2), F.A.C.

Q: Who signs quarantine orders? Who signs isolation orders?

A: There is no express legal requirement for signature, which is a matter of tradition and custom. The County Health Department Director (M.D.) or Administrator (layperson) may sign, or their delegates. Rule 64D-3.005(1), F.A.C. Isolation orders are a subset of quarantine orders. Rule 64D-3.007(2), F.A.C.

Q: Are there forms for quarantine orders? Why aren’t they adopted as rule?

A: DOH has proposed model orders for quarantine, but insufficient facts exist to adopt those model orders as Ch. 120 rule. Proposed model orders are an administrative convenience for DOH. If pandemic influenza facts emerge, DOH will adopt an emergency rule package addressing steps to combat the emergency, including procedures; meanwhile the entire exercise is hypothetical.

Q: How will the health department quarantine large areas? Thousands of people?

A: There are no DOH plans to impose mass quarantine or to close large areas as part of pandemic response. History teaches that such quarantine efforts are ineffective at best. Florida DOH will rely on public cooperation and voluntary compliance, which we will ask for through communications messaging, and through local public health alerts and state-wide public health advisories. Our efforts will be focused on defeat of the disease threat, with the citizens as our allies in that effort, not on liberty restrictions.

Q: How are quarantine orders served?

A: DOH Panflu Annex, Appx 9 Rapid Response & Containment, posits that during the period where panflu appears in small cases and clusters, the ill may be isolated and their contacts quarantined. See

[http://www.doh.state.fl.us/rw\\_Bulletins/flpanfluv104final.pdf](http://www.doh.state.fl.us/rw_Bulletins/flpanfluv104final.pdf) Other quarantine orders

directed at individuals likely will be caused by non-compliance conduct that endangers the public. But the rapid progress of influenza as a disease generally renders such actions moot. Non-compliance orders will be personally served on the offending individuals, and likely will require quarantine to residence, possibly other locations, depending on circumstances.

Q: How are quarantine orders enforced? Is there a penalty for violation?

A: Violation of a quarantine order is a second degree misdemeanor. Sec. 381.0025(1), F.S. Florida Statutes say that state attorneys, county attorneys, police officers, sheriffs, and “other appropriate city and county officials” have the duty to help the health department upon request to enforce the state’s health laws and rules. Sec. 381.0012(5), F.S.

Q: Will the health department close schools? Shut down transportation systems?

A: The health department has no specific statutory jurisdiction over schools, though it possesses general authority over “premises.” Sec. 381.0011(6)(a)1, F.S. As to transportation systems, same answer.

Q: What procedures are there for legal review of quarantine orders? Aren’t these administrative law proceedings?

A: Quarantine authority is a police power by nature. Procedures for legal review already exist based on common law extraordinary writ practice, namely, Petition For Writ Of Habeas Corpus. Varholy v. Sweat, 153 Fla. 571; 15 So.2d 267; 1943 Fla. LEXIS 700 (1943); see also sec. 79, F.S. and Rule 1.630, Florida Rules of Civil Procedure (extraordinary remedies). But before such events, the health department proposes at this time to follow the CDC lead and provide internal fact review of the basis for quarantine orders. See generally, 42 C.F.R. Parts 70, 71 (proposed). Many Florida jurisdictions agree that Fla. Const. Art. V judges, who are familiar with the issues that surround depriving persons of their liberty, are best suited to hear these cases. The workload of state agencies is distributed so that the Office of Attorney General handles litigation involving constitutional questions and rights challenges, though it turns out that habeas proceedings are a fairly complex area of law – probably because habeas litigation usually is initiated by prisoners. State agency final decisions usually are subject to administrative procedures act review, though those proceedings are not swift. Sec. 120.569, F.S. Present intention of the health department is to advise quarantined persons that they may have both Constitutional and administrative remedies available to them, and allow them to choose.

Q: Who provides legal counsel to quarantined persons? To quarantined property? Who represents the government during legal review?

A: The US Supreme Court has said there is no right to counsel at public expense outside the criminal justice system. The Florida Supreme Court has said that quarantine is not a criminal detention, Varholy, though violation of quarantine is criminal. The health department has no budget or spending authority to provide legal counsel to the public in quarantine cases. Quarantined property is a closure, not a taking, and therefore is generally not compensable. Staff counsel of the health department will represent and advise health department clients until cases are transferred to specialists, e.g. through Risk Management re-assignment or transfer to other-agency counsel.

- Q: Won't the health department claim failure to exhaust administrative remedies?
- A: The health department will not invoke the defense of failure to exhaust administrative remedies when a citizen seeks habeas review. It is in the mutual interest of the health department and the public health to have speedy review of quarantine challenges.
- Q: How will quarantined people get food/medicines? What happens if they become ill while quarantined?
- A: A panflu event by all definitions will be an emergency event. Florida, like the other states and the federal government itself, is required by law to employ Incident Command in its response to emergency. Health and Medical is Emergency State Function 8 (ESF-8). Food and delivery is in the charge of Mass Care, ESF-6. There is not yet an answer about how people will get medicines, although there are operationalized plans for Points Of Distribution (PODs) for dispensing prophylactic medicines to asymptomatic people, e.g. Cipro to persons potentially exposed to Anthrax. No answer exists yet regarding medications or medical treatment for quarantined individuals whose health declines for reasons other than pandemic. Planners are working on this issue.
- Q: What about people who need to travel? Who need to meet with their lawyers or financial advisers, or go to the bank?
- A: CDC regulations allow the Director to grant travel passes to quarantined persons upon a showing of good cause. See, 42 C.F.R. Parts 70, 71 (proposed). The health department probably will follow CDC practice in that area.
- Q: What is 'social distancing'?
- A: Social distancing is not a legal term, nor is it a term of art. It is an expression that attempts to capture the notion of avoiding close contact with other potentially-infected persons. Paraphrased, it means 'keep your distance,' such as paying for gasoline at the station with a credit card rather than at the counter inside; or shopping for groceries once a week rather than nightly on the way home from work. It may ultimately reduce to a physical distance to be maintained between people, e.g. 6 or more feet, in all social activities.
- Q: Can people get exemptions from quarantine for work? Who pays when people are quarantined at home and can't work?
- A: See above re travel passes while quarantined. Payment when home on quarantine is an unresolved issue, though there are circulating discussions about using unemployment compensation benefits in this way. That requires either legislative action or emergency order of the executive.