Members Brief

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Department of Health's Authority in an Emergency that Affects the Public Health

Under Ohio law, the Ohio Department of Health (ODH) must supervise all matters related to preserving the life and health of the people and is given authority over matters of quarantine and isolation. ODH is authorized to issue special or standing orders or rules to prevent the spread of contagious or infectious disease. Local boards of health, under certain circumstances, also may issue orders and impose quarantine and isolation. ODH orders are enforceable by injunction and criminal penalties. In response to the COVID-19 pandemic, the General Assembly enacted legislation authorizing the legislature to rescind special or standing orders issued by ODH by concurrent resolution. It also established a joint legislative committee to oversee certain actions taken by ODH.

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General authority of Ohio Department of Health

The State Board of Health, the Ohio Department of Health's (ODH) predecessor, was created in 1886. The Board's initial powers were limited to supervision of the interests of the health and life of citizens of Ohio and the duty to inquire into the cause of disease, especially the invasion and spread of infectious, contagious, epidemic, and endemic diseases.[1] It was granted

[1] S.B. 90 of the 67th General Assembly.

the power to make special or standing orders or regulations for preventing the spread of contagious or infectious disease in 1893.[2]

Much of the authority granted to the State Board of Health, and today, ODH, has seen few changes over the years, with little case law interpreting its scope. Today, Ohio law gives ODH supervision of all matters relating to the preservation of the life and health of the people. ODH may make special or standing orders or rules for preventing the spread of contagious or infectious diseases.[3] The law does not limit the types of orders ODH may issue, and there is limited case law interpreting the statute.[4] Moreover, the Director of Health also is required to investigate the cause of disease or illness, including contagious, infectious, epidemic, pandemic, or endemic conditions, and take prompt action to control and suppress it.[5] Neither provision is contingent on the declaration of an emergency.

Whenever possible, the law requires ODH to work in cooperation with local boards of health. ODH may make and enforce orders in local matters or reassign substantive authority for mandatory programs from one local board to another when an emergency exists, or when the local board has neglected or refused to act with sufficient promptness or efficiency.[6]

Enforcement of ODH orders

Ohio law prohibits any person from violating any rule the Director of Health or ODH adopts or any order the Director or ODH issues to prevent a threat to the public caused by a pandemic or epidemic. Violating the law is a misdemeanor of the second degree, punishable by up to 90 days in jail and up to a $750 fine.[7] Additionally, the Director may petition the court of common pleas for injunctive relief to require compliance with the Director's orders or other appropriate relief.[8]

General Assembly authority over ODH orders

During the COVID-19 pandemic, most public health orders were issued by the Director of Health under the authority described above. In 2021, in response to these public health orders, the 134th General Assembly enacted S.B. 22, assuming oversight regarding the Director's authority. Currently, during a declared state of emergency, ODH is required to report to the Senate President and the Speaker of the House every action that ODH takes in response to the emergency.[9] Additionally, the legislature established the Ohio Health Oversight and Advisory

[2] Section 2, H.B. 1149 of the 70th General Assembly.

[3] R.C. 3701.13(C).

[4] *Hartman v. Acton*, 499 F.Supp.3d 523 (Nov. 3, 2020) (dismissing a challenge to ODH's authority to issue a stay-at-home order during the COVID-19 pandemic as neither unconstitutionally vague nor an impermissible delegation of legislative authority).

[5] R.C. 3701.14.

[6] R.C. 3701.13(E).

[7] R.C. 3701.352, 3701.99(C), 2929.24, and 2929.28.

[8] R.C. 3701.57.

[9] R.C. 107.43(B).

Committee, a joint legislative committee tasked with overseeing actions taken by the Governor, ODH, and other agencies during a state of emergency, actions taken by ODH to prevent the spread of disease, and actions taken by the Director of Health to investigate, make inquiry, and take prompt action to control and suppress the cause of disease. The Committee is authorized to consult with and provide advice regarding necessary and appropriate actions during a state of emergency. In furtherance of the Committee's duties, the Committee chair, President, and Speaker have subpoena power.[10]

Ohio law empowers the General Assembly to rescind an ODH special or standing order or rule for preventing the spread of contagious or infectious disease, or an action taken by the Director of Health to investigate, make inquiry, and take prompt action to control and suppress the cause of disease. At any time after ODH issues such an order or rule, or the Director takes an action described above, the General Assembly may rescind it, in whole or in part, by adopting a concurrent resolution.[11]

If the General Assembly rescinds an order, rule, or action, ODH and the Director are prohibited from reissuing the order or rule or taking the action for 60 days. If ODH or the Director attempts to reissue the order, rule, or action in violation of the law, the order, rule, or action is invalid and has no legal effect.[12]

The Governor, on behalf of ODH or the Director, may request that the General Assembly permit ODH or the Director to issue an order or rule or take an action that was rescinded by the General Assembly. After reviewing the request, the General Assembly may adopt a concurrent resolution authorizing ODH or the Director to issue the rescinded order or rule or take the action.[13]

Local boards of health

Ohio has a longstanding history of local public health authority. Many local boards of health were established long before being formally required beginning in 1893. Ohio's current localized public health structure was established in 1919, with the passage of the Hughes-Griswold Act. This occurred during the height of an influenza pandemic.

The Ohio Constitution grants municipalities the authority to exercise all powers of local self-government.[14] Home rule powers extend to public health issues and emergency situations. Similarly, local boards of health have statutory authority to make orders and regulations that are necessary for the public health and the prevention or restriction of disease. In cases of emergency caused by epidemics of contagious or infectious diseases, local boards may declare orders and

[10] R.C. 103.65 and 103.651.

[11] R.C. 101.36(A)(1) and (2).

[12] R.C. 101.36(A)(3) and (C).

[13] R.C. 101.36(B).

[14] Ohio Constitution, Article XVIII, section 7.

regulations to be emergency measures. Emergency measures take effect immediately, bypassing requirements regarding advertising, recording, and certification.[15]

Ohio law requires that orders issued by a local board of health may apply only to specific individuals or businesses. Any order that applies to a class of persons is invalid and has no legal effect.[16] Moreover, the law specifies that any order or regulation issued by a local board of health for the public health or the prevention or restriction of disease may apply only to individuals and businesses that (1) have been medically diagnosed with the disease that is the subject of the order or regulation, (2) have come in direct contact with someone who has been medically diagnosed with that disease, or (3) have a documented incident in the building of that disease.[17] When a dangerous communicable disease is unusually prevalent, and a verified positive case of the disease is documented in a specific school building, a local board of health may close that school building for a period of time necessary to disinfect the building or otherwise bring it into sanitary condition.[18]

Whoever violates a local board order is subject to a fine of up to $100 and imprisonment for up to 90 days, although the law prohibits a person from being imprisoned for a first offense.[19] If a local board of health order is not complied with, the board may petition the court of common pleas for injunctive relief.[20]

In a general sense, however, the Ohio Supreme Court has found that neither the provisions of home rule nor the local board authority described above deprive the state of any sovereignty over cities in respect to the public health, which it elects to exercise by general laws.[21] The court has determined that the Revised Code does not give local boards unrestricted control and authority to regulate local health matters.[22] Indeed, the General Assembly has clarified that the authority of ODH is superior to the authority of local boards of health.[23]

Authority specific to quarantine and isolation

Quarantine generally refers to separation and movement restrictions on healthy persons who may have been exposed to communicable diseases, while isolation refers to separation of sick persons from those who are healthy. Historically, matters of quarantine and isolation were a local duty. State health authorities were not granted authority in matters of quarantine and isolation until 1889, and even then, the authority was granted due to concerns about local

[15] R.C. 3709.20 and 3709.21.

[16] R.C. 3707.54 and 3709.50.

[17] R.C. 3709.212.

[18] R.C. 3707.26.

[19] R.C. 3709.99(A).

[20] R.C. 3709.211.

[21] *Bucyrus v. Department of Health*, 120 Ohio St. 426 (1929).

[22] *D.A.B.E. Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250 (2002).

[23] R.C. 3701.13(B)(3).

government overreach.[24] By 1893, ODH's authority in matters of quarantine and isolation was described as "supreme."[25] Today, both ODH and local boards of health have authority over matters of quarantine and isolation. Additionally, a health commissioner may implement quarantine and isolation policies in certain circumstances. Local boards are required to adopt a policy specifying the actions a health commissioner may take regarding quarantine and isolation if the board cannot meet or if delaying action until the board can meet compromises the public health.[26]

Currently, ODH has authority in matters of quarantine and isolation, which it may declare and enforce, when neither exists, and may modify, relax, or abolish, when either has been established.[27] Prior to the enactment of S.B. 22 in 2021, Ohio law did not define "quarantine" or "isolation." Instead, ODH relied on the definitions established by the U.S. Centers for Disease Control and Prevention (CDC). Now, Ohio law defines "quarantine" as "the separation or restriction of movement of one or more individuals who have come into direct contact with someone who has been medically diagnosed with a communicable or contagious disease." "Isolation" is defined as "the separation of one or more individuals who have been medically diagnosed with a communicable or contagious disease from other individuals who have not been medically diagnosed with the disease."[28] To date, it does not appear that any case law interprets how the requirements of direct contact and a medical diagnosis will factor into future quarantine and isolation orders.

The definitions of quarantine and isolation discussed above also apply to local boards of health and actions they take with respect to quarantine and isolation. In general, local boards of health may only issue quarantine and isolation orders that apply to individuals who have been medically diagnosed with or have come in direct contact with someone who has been medically diagnosed with the disease that is the subject of the order.[29]

With regard to individuals entering Ohio from certain foreign countries, ODH's authority in matters of quarantine and isolation is more expansive. When an individual travels to Ohio from another country for which the CDC has issued the highest level of travel health notice due to an outbreak of a communicable or contagious disease, ODH may quarantine or isolate the individual for up to 48 hours following arrival in Ohio, regardless of whether the individual has been medically diagnosed with or come in direct contact with someone who has been medically diagnosed with the disease. If ODH requires an individual to quarantine or isolate, ODH is

[24] S.B. 471 of the 68th General Assembly and State Board of Health, *Fourth Annual Report of the State Board of Health, of the State of Ohio, to the Governor of the State of Ohio, for the year ending October 31, 1889*, p. 16 (1889).

[25] H.B. 1149 of the 70th General Assembly.

[26] R.C. 3707.34.

[27] R.C. 3701.13(B)(1).

[28] R.C. 3701.13(A).

[29] R.C. 3707.01(A) and 3707.11.

responsible for providing that individual with transportation, lodging, food, and any necessary medical examination, testing, or treatment related to the disease.[30]

Enforcement of quarantine and isolation

Similar to ODH orders, persons are prohibited from violating, obstructing or interfering with, or willfully or illegally omitting to obey, local board orders regarding quarantine. A person who violates the law is guilty of a minor misdemeanor for a first offense (a fine of up to $150) or a fourth degree misdemeanor for a second or subsequent offense (up to 30 days in jail and a fine of up to $250).[31] If a corporation violates the law, it is subject to a fine of up to $300.[32]

Local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other state and local officers and employees are required to enforce quarantine and isolation orders and ODH rules. Moreover, any person who has a contagious disease is required to take reasonable measures to protect others from exposure and to inform health authorities. Knowingly failing to do so is a second degree misdemeanor. If a person has charge or care of a person who has a dangerous, contagious disease, recklessly failing to take reasonable measures to protect others from exposure and inform health authorities is a second degree misdemeanor. [33]

Ohio law authorizes local boards of health, with permission from ODH, to quarantine travel during times of epidemic or threatened epidemic, or when dangerous communicable disease is unusually prevalent. A board of health can require that a house or locality be inspected if there is a reasonable belief that an infectious or contagious disease exists that has not been reported as required by Ohio law.[34]

When a person has been exposed to a communicable disease declared to be quarantinable by ODH or a local board of health, the board must restrict that person to the person's place of residence or another suitable place and must prohibit entrance to and exit from that place without the board's permission. When a person has, or is suspected of having, a communicable disease for which isolation is required by ODH or the board, the board must immediately cause the person to be separated from susceptible persons. A person isolated or quarantined by a board of health is not permitted to leave the premises without written permission from the board until released from isolation or quarantine.[35] Persons in isolation or quarantine are specifically prohibited from attending public gatherings, including school and church, until released by the board. A board of health must provide quarantined persons with food, other necessities, and medical care.[36]

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[30] R.C. 3701.13(B)(2).

[31] R.C. 3707.48, 3707.99(B), and 2929.28.

[32] R.C. 3707.49.

[33] R.C. 3701.56, 3701.81, and 3701.99(C).

[34] R.C. 3707.04, 3707.05, and 3707.07.

[35] R.C. 3707.08.

[36] R.C. 3707.14, 3707.16, and 3707.17.

A board may employ guards to ensure quarantine is followed.[37] Ohio law also specifies property disinfection and destruction procedures to be used as appropriate when quarantine ends. When a great emergency exists, a board of health may seize, occupy, and temporarily use vacant houses or buildings within its jurisdiction for quarantine hospitals. Local boards of health also may erect temporary field hospitals.[38] With few exceptions, the laws governing enforcement of quarantine and isolation have not been amended since the Revised Code was codified in 1953.

Note on federal authority

In addition to the state and local authority described in this brief, the federal government also has authority during emergencies that affect the public health. More information is included in the Congressional Research Service's "Emergency Authorities under the National Emergencies Act, Stafford Act, and Public Health Service Act"[39] and the federal Administration for Strategic Preparedness and Response's "HHS Legal Authorities Related to Disasters and Emergencies" and "Legal Authority of the Secretary."[40]

[37] R.C. 3707.09; see also 3701.56.

[38] R.C. 3707.10, 3707.12, 3707.29, 3707.31, and 3707.32.

[39] Elsea, Jennifer K. et al., Congressional Research Service, R46379 (July 14, 2020).

[40] Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.