



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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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) supervises all matters related to preserving the life and health of the people, and ODH is given specific authority over all matters of quarantine and isolation. ODH is authorized to issue special or standing orders or rules to prevent the spread of contagious or infectious diseases. Local boards of health also may issue orders and, with ODH’s permission, quarantine and isolate. ODH orders are enforceable by injunction and criminal penalties.

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General authority of Ohio Department of Health (ODH)

Ohio law gives ODH supervision of all matters relating to the preservation of the life and health of the people. In furtherance of that authority, ODH may make special or standing orders or rules for preventing the spread of contagious or infectious diseases.¹ The law does not limit the types of orders ODH may issue, and there does not appear to be case law addressing the issue. Moreover, the Director of Health 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.²

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

¹ R.C. 3701.13.

² R.C. 3701.14.

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.³

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.⁴ Violating the law is a misdemeanor of the second degree, punishable by up to 90 days in jail and up to a \$750 fine.⁵ 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.⁶

Local boards of health

Municipalities are granted the authority to exercise all powers of local self-government.⁷ Home rule powers extend to public health issues and emergency situations.

Local boards of health have 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, the board may declare orders and regulations to be emergency measures. Emergency measures take effect immediately, bypassing requirements regarding advertising, recording, and certification.⁸ 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.⁹ If a local board order is not complied with, the board may petition the court of common pleas for injunctive relief.¹⁰

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.¹¹ The Court has determined that the Revised Code does not give local boards unrestricted control and authority to regulate local health matters.¹² No case law was found suggesting how an emergency order issued by a local board of health might be reconciled with a conflicting emergency order issued by the Director of Health.

³ R.C. 3701.13.

⁴ R.C. 3701.352.

⁵ R.C. 3701.99(C), 2929.24, and 2929.28.

⁶ R.C. 3701.57.

⁷ Ohio Constitution, Article XVIII, section 7.

⁸ R.C. 3709.20 and 3709.21.

⁹ R.C. 3709.99(A).

¹⁰ R.C. 3709.211.

¹¹ *Bucyrus v. Department of Health*, 120 Ohio St. 426 (1929).

¹² *D.A.B.E. Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250 (2002).

Authority specific to quarantine and isolation

Quarantine generally refers to separation and movement restrictions on well persons who may have been exposed to communicable diseases, while isolation refers to separation of sick persons from those who are healthy. Ohio law has given ODH quarantine and isolation powers since ODH was established in 1886 (S.B. 90 of the 67th General Assembly). As described above, ODH has the ultimate authority in matters of isolation and quarantine and is authorized to make special or standing orders or rules to prevent the spread of contagious or infectious diseases. ODH may declare and enforce quarantine and isolation when neither exists, and may modify, relax, or abolish, when either has been established.¹³ An administrative rule specifically sets forth isolation requirements for various diseases and conditions.¹⁴

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.¹⁵ A person who violates the law is guilty of a minor misdemeanor for a first offense (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).¹⁶ If a corporation violates the law, it is subject to a fine of up to \$300.¹⁷

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.¹⁸

Moreover, any person having care or charge of a person suffering from a dangerous, contagious disease is required to take reasonable measures to protect others from exposure and to inform health authorities. Recklessly failing to do so is a second degree misdemeanor.¹⁹

In addition to state authority, 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.²⁰ A board of health can require that a house or locality be inspected if there is reasonable belief that an infectious or contagious disease exists that has not been reported as required under Ohio law.²¹

When a person has been exposed to a communicable disease declared quarantinable by ODH or a local board of health, the board of health is required to restrict that person to the person's place of residence or another suitable place and to prohibit entrance and exit from that

¹³ R.C. 3701.13.

¹⁴ Ohio Administrative Code (O.A.C.) 3701-3-13.

¹⁵ R.C. 3707.48.

¹⁶ R.C. 3707.99(B) and 2929.28.

¹⁷ R.C. 3707.49.

¹⁸ R.C. 3701.56.

¹⁹ R.C. 3701.81 and 3701.99(C).

²⁰ R.C. 3707.04 and 3707.05.

²¹ R.C. 3707.07.

place without the board's written 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 the board is not permitted to leave the premises without written permission from the board until released from isolation or quarantine.²² Persons in isolation or quarantine are specifically prohibited from attending public gatherings, including school and church, until released by the board.²³ The board of health must provide quarantined persons with food, other necessities, and medical care. The cost of the care is the responsibility of the quarantined person or the locality if the person cannot pay.²⁴

During an epidemic or threatened epidemic, or when a dangerous communicable disease is unusually prevalent, the board may close any school and prohibit public gatherings.²⁵ A board may employ guards to ensure quarantine is followed.²⁶ Generally speaking, these provisions have not been amended since the Revised Code was enacted in 1953. Ohio law also specifies property disinfection and destruction procedures to be used as appropriate when quarantine ends.²⁷ Ohio law also authorizes municipal corporations to establish quarantine hospitals. 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.²⁸ Boards of health also may erect temporary field hospitals.²⁹ Finally, a health commissioner may implement quarantine and isolation policies in certain circumstances. Each board of health must adopt a policy specifying the actions a health commissioner may take regarding quarantine and isolation in the event that the board cannot meet or that delaying action until the board can meet compromises the public health.³⁰

Ohio's response to the 1918 influenza epidemic

There is limited historical precedent for statewide closure orders related to pandemics. In 1918, for example, during the influenza pandemic that began in Kansas and is colloquially referred to as the "Spanish flu," then Governor James Cox, the Acting State Commissioner of Health James Bauman, and the Public Health Council issued "Instructions to Local Health Officers

²² R.C. 3707.08; see also 3707.21 and 3707.22 (regarding quarantine of persons in public charitable and correctional institutions).

²³ R.C. 3707.16.

²⁴ R.C. 3707.14 and 3707.17.

²⁵ R.C. 3707.26.

²⁶ R.C. 3707.09; see also 3701.56.

²⁷ R.C. 3707.10 and 3707.12.

²⁸ R.C. 3707.29 and 3707.31.

²⁹ R.C. 3707.32.

³⁰ R.C. 3707.34.

for the Prevention and Control of Influenza,” a series of strong recommendations to local boards of health to close places of public gathering. No statewide closure order was given.³¹

Note on federal authority

It is worth noting that the federal government also has expansive authority during emergencies that affect the public health. More information is included in “Selected Federal Legal Authorities Pertinent to Public Health Emergencies,” a 2017 document prepared by the Public Health Law Program of the Centers for Disease Control and Prevention.³²

³¹ <https://www.influenzaarchive.org/cities/city-columbus.html#>.

³² <https://www.cdc.gov/phlp/docs/ph-emergencies.pdf>.