# Balancing the Rights of the Individual and the Need to Protect the Public

**Chapter 4**

One of the primary roles of government is to help protect the public from harm and to ensure the public's welfare. Public health leaders are specifically charged with promoting, protecting, and improving the health of communities. As a result, it is public health's responsibility, along with other government officials, to act to protect the overall health and well-being of the population during emergencies. In acting to protect the public, these officials may need to take steps which interfere with the rights of individuals. (See Appendix B for explanations of the authority of the governor and state and local government during disasters and emergencies.) This potential conflict between the rights of individuals and the need to protect the public raises ethical issues.

In a pandemic, public health officials may need to implement measures to limit illness and death or to slow the progress of the epidemic. These measures can conflict with personal liberties and individual privacy. Public health "community mitigation" measures may include isolation, quarantine, or other forms of social distancing, as well as selected release of personal health information. Isolation applies to individuals who actively have a disease.[a,b] Public health officials may require individuals with influenza or those suspected of having the pandemic influenza to remain at home, in temporary housing, or in a healthcare facility to prevent the spread of the disease to others. Quarantine applies to individuals who may have had contact with an infected person and may be contagious to others. As with infected individuals, public health officials may require exposed individuals to remain at home or in a special location. Isolation and quarantine are most effective in the early stages of an influenza pandemic, when not many people have been infected. The goal is to keep infected people or people who have been exposed to infected individuals away from the general public in order to minimize the spread of the disease.

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Other types of social distancing measures may be necessary once the influenza virus is more widespread. The goal of social distancing measures is to reduce contact with potentially infected individuals. Such measures may include, but are not limited to: closing schools or day care centers, suspending large social gatherings (such as

a The North Carolina General Statutes already give the State Health Director and local health directors the authority to order quarantine and isolation. However, this power can only be exercised "when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists." NCGS §130A-145. An individual who has had his/her freedom of movement curtailed through a public health official's orders can appeal the decision to Superior Court. The hearing on the public health order generally must be held within three days. The individual who requests the court review can be represented by an attorney or have an attorney appointed if the person is poor. Normally, a person's freedom of movement may not be limited for more than 30 days. The authorized public health official must obtain a court order to restrict a person's movement for more than 30 days.

b A more complete overview of public health's authority to issue isolation and quarantine orders is available.[1]

sporting events), or asking churches to suspend their normal services.[c] Public health or other government officials may also request that employees work off-site if they can, and may request that nonessential personnel voluntarily stay home from work. (See Appendix F for the US Department of Health and Human Services guidelines for use of different community mitigation strategies.)

*Social distancing can help reduce the spread of disease during influenza pandemics.*

Evidence suggests that social distancing can help reduce the spread of disease during influenza pandemics.[2] During a wave of the Spanish Flu, St. Louis was able to keep its death rate low by imposing restrictions on public gatherings (eg, conventions, theaters, schools, pool halls, dance halls, and lodges) early in the course of the pandemic (ie, when only 2.2% of people were infected), compared to Philadelphia which had a much higher death rate.[d] Philadelphia did not impose restrictions until more than 10% of its population had contracted the disease.

In addition to social distancing measures, it may be necessary for public health authorities to obtain confidential health records.[e] For example, healthcare professionals may need to release the name and contact information of infected individuals to public health officials in order to identify individuals who may need to be quarantined or isolated. Public health officials may need to take preventive measures that have not been fully tested in the early stage of the pandemic. These public health measures will be based on the best evidence available at the time. The Task Force recognized that it was not prudent to wait for epidemiological test results in the face of a rapidly spreading and potentially lethal influenza pandemic.

The NC IOM/DPH Task Force on Ethics and Pandemic Influenza Planning recognized that it may be necessary for public health or governmental officials to restrict individual liberties and privacy rights to limit the number of epidemic-associated illnesses and deaths or to slow the progression of the epidemic. Social distancing measures may also help reduce the risk infectious individuals pose to others.

The need to protect the public must be balanced with the rights and needs of the individual. Restrictions on personal liberties can pose significant difficulties for the individuals and families involved. Individuals and families may be adversely affected by the loss of income (eg, forgone wages, revenues, or other financial support) and social support (eg, inability to visit other family and friends). Other individuals—not subject to the restrictions—may be directly affected by the lack of access to family, friends, or colleagues, as well as indirectly affected by the lack of services or income provided by those individuals. Business and industry may be

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c North Carolina local governments also have the authority to adopt ordinances that authorize local officials to restrict movement in public places; the operation of offices, businesses, and other places where people congregate; and the activities or conditions which may be needed to maintain order and protect lives or property during a disaster. NCGS §14-288.12(b). Local government officials may order these actions only to the extent permitted by their local ordinances, which vary across the state. However, the Governor may order any of these actions in any part of the state, whether or not the actions are addressed by local ordinances, if the Governor determines a state of emergency exists and local control is insufficient to protect lives and property. NCGS §14-288.15(c).

d Mortality data for 1918 provided by Marc Lipsitch (personal communication).[3]

e Healthcare professionals are required to report to the local health director any communicable disease specified by the North Carolina Commission for Health Services. NCGS §§130A-134, 135. Healthcare professionals must report any known or suspected novel influenza virus infection immediately and any influenza virus causing death in any individual younger than 18 within one day. 10 NCAC §§41A.0101(a)(29)(43). The personal health information that is reported to the local health director and to DPH is confidential and cannot be released further, except under very limited circumstances. NCGS §§130A-143.

affected by the loss of workers, customers, or other sources of income. Individuals charged with enforcing the control measures may be put at risk from interactions with infected and potentially distressed individuals.

Safeguards are needed to ensure that infringements on personal liberties are proportional to the need to protect the public and are applied equitably to all similarly situated individuals. For example:

(1) Public health officials should choose the least restrictive and least intrusive effective alternative that is necessary to protect the public.

(2) Public health interventions should be as just and fair as possible. Justice requires that affected individuals have due process rights to challenge the restrictions and that restrictions be applied equitably to similarly situated individuals.

(3) Public health should only seek the release of personal health information when needed to protect the public. The released information should be as limited as possible and the public should be aware of the safeguards in place to protect any information collected.

Thus, the Task Force recommends that:

**Recommendation 4.1: Government leaders should implement restrictions on personal liberties deemed likely to be effective to limit illness and mortality in the context of a pandemic, but should limit these measures to the least restrictive alternative reasonably necessary to protect the public.**

Scenario: *Airline passengers arriving at Charlotte Douglas International Airport*

One of the passengers on a flight from Los Angeles to Charlotte has become ill with high fever and coughing. She is returning from a two week trip to Indonesia, where outbreaks of H5N1 in poultry are widespread and an increasing number of person to person clusters of illness have been reported. There have been no confirmed cases of the H5N1 virus in North Carolina. Upon arrival at Charlotte, she is taken off the plane first and evaluated by EMS. The decision is made to have her tested for avian influenza. Local and state public health officials, in conjunction with the Centers for Disease Control and Prevention's Division of Global Migration and Quarantine, are establishing a quarantine facility at the airport for the passengers on the flight from Los Angeles to Charlotte.

Two of the passengers have expressed a concern at being delayed. First, a prominent businesswoman needs to catch a connecting flight to Atlanta in four hours. She cannot afford to miss her flight or it will result in the loss of a large business contract. She is refusing to be delayed or put in quarantine. The other passenger is an unaccompanied 6-year-old boy who was traveling from his home in California to visit his grandparents in Gastonia. He is very frightened and has started to cry. He was supposed to meet his grandparents at the gate. His grandmother is in the terminal demanding to be reunited with her grandson.

Every attempt should be made to ensure that the public is aware of the need for epidemic-related restrictions of individual liberties. Informing the public about the reasoning behind these social distancing measures likely will improve compliance. Public feedback should be sought and public education should be provided regarding the measures, ideally prior to implementation. The public education campaign

should inform the public of the need for the measures, what the measures might include, ways individuals can prevent the spread of the disease, and the availability of due process hearings if they are subject to isolation or quarantine orders.[f] The government should use multiple media outlets (eg, newspaper, television, radio, internet) and telephone hotlines, and should work with trusted community leaders to educate the public about pandemic influenza preparedness and pandemic influenza symptoms. Additional education is also needed for court officials and other law enforcement officials who may be called upon to help enforce the public health measures.

## Recommendation 4.2:

**(a) Prior to and during the course of an pandemic, the North Carolina Department of Health and Human Services should partner with local health departments to develop a public outreach campaign to foster community awareness and understanding of pandemic influenza. The outreach campaign should:**

**(i) Include other stakeholders, community groups, and the media;**

**(ii) Ensure that the public is well informed of the potential need to use community mitigation efforts or to prioritize the use of limited resources; and**

**(iii) Include mechanisms to obtain ongoing feedback from the community prior to and during the course of an influenza pandemic.**

**(b) The North Carolina Department of Health and Human Services should continue to work with the North Carolina Justice Academy, Administrative Office of the Courts, local law enforcement, UNC School of Government, North Carolina National Guard, and North Carolina Department of Crime Control and Public Safety to create an understanding of the need to use social distancing measures and other community mitigation efforts to prevent the spread of disease in an influenza pandemic.**

During a pandemic, it will be critically important that accurate health information be conveyed to the public in a timely manner to minimize the spread of misinformation or panic. Public health officials as well as other officials in state government have an ethical obligation to ensure that the public is provided with timely, accurate health information in order to keep the public informed of the progress of the pandemic and measures the public can take to protect themselves and their families. The public information campaign should include facts about the origin of the virus and how the virus is spread in order to dispel rumors, innuendo, and prejudice. In addition, information should be provided about pandemic influenza symptoms, services that are available, and treatment that can be provided at home. The public is likely to demand a continuous source of information about the pandemic. To address this need, the NC Department of Health and Human Services, in collaboration with the Department of Crime Control and Public Safety, should provide a source of continuous up-to-date information such as a 24-hour television or radio show, telephone hotline, and/or a website to provide continuous information to the public. The information should be made available in several languages and in mediums that are accessible to people with visual or hearing impairments.

f Information should be available through multiple venues, including but not limited to the internet, newspapers, television, radio, etc., and in the multiple languages spoken by residents of North Carolina.

To address this need, the Task Force recommends:

**Recommendation 4.3:** **The Governor's Office, in conjunction with the North Carolina Department of Health and Human Services and the Department of Crime Control and Public Safety, should develop a coordinated communications plan, to ensure that the public obtains timely, accurate and continuous information about the influenza pandemic. Special attention should be paid to assure that this information is communicated to special populations, including, but not limited to, low-income communities, non-English speakers, and people who have visual or hearing impairments.**

Before a pandemic happens, government officials, as part of their communications plan, should disseminate information through community leaders (eg, faith leaders and physicians) and at community gathering places (eg, religious institutions, barber shops, beauty parlors, and funeral homes). Once a pandemic occurs, government officials may have to rely on these community leaders to get information to individuals and to discourage individuals from congregating.

Limits on individual rights should not be implemented in a manner that suggests the limits are punitive. The ill and exposed individuals are innocent victims who did not choose to become infected; thus they should not appear to be punished for their infection or exposure. For example, individuals who have been put in isolation or quarantine should not be detained in jails or prisons. Rather, any necessary institutional housing should be provided in nondegrading locations. In addition, public acceptance of social distancing measures will be enhanced if the public believes that it is being equitably applied based on sound scientific reasons intended to prevent the spread of disease. Thus, it is important to ensure that restrictions on personal liberty are not imposed on, or perceived as disproportionately falling on, any particular subpopulation (eg, low-income populations, people of a certain race or ethnicity).[g] If it is necessary to impose greater restrictions on certain subgroups (eg, because of greater housing density in certain communities), then the rationale based on the best science available must be clearly communicated to the public.

Individuals who have had their property seized by the state are entitled to just compensation.[r] Similarly, government should ensure that people who are subject to isolation or quarantine have their basic necessities met (including food, shelter, water, healthcare, utilities, and the ability to communicate with family and friends). Similar strategies may be necessary to support compliance with voluntary distancing measures as some individuals and families will have difficulties complying with social distancing requests without further assistance. Many people live from paycheck-to-paycheck and do not have jobs where they can work off-site. Without some help, they may be unable to comply with social distancing requests to stay at home.

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g During the SARS epidemic, persons of Chinese descent were more adversely affected by restrictions and prejudice, even though most of them had not been to Hong Kong (or had contact with someone from Hong Kong) and thus were not at an increased risk of being sick or being infectious to others. This phenomenon occurred in numerous countries.[4,5]

h The Governor has the authority to seize property during an emergency and/or operate utilities and/or transportation services. NCGS §166A-6(c)(3),(8). Individuals who have had their property confiscated or seized have a right to compensation. NCGS §166A-11(a).

There will likely be an increased demand for social services (eg, food stamps, cash assistance, or Medicaid) and other governmental support (eg, unemployment compensation or housing subsidies). Other social relief or community agencies also may be called upon to help families meet their basic subsistence needs during a pandemic. This increased need for assistance will cause tremendous logistic challenges because of the need for continued social distancing efforts to prevent the spread of disease. Governmental and community agencies may need to modify their normal operating procedures in order to minimize the risk of infection. Social service and relief agencies may need to take applications by mail or on the phone, instead of requiring people to apply in person. Similarly, religious leaders may be able to meet their congregations' spiritual needs through greater use of telephone, radio, internet or other mechanisms. Governmental or relief organizations also may be called upon to provide additional or different services to support social distancing efforts. For example, schools may be enlisted to prepare food for both the children who rely on school feeding programs and seniors or other people who are homebound. Prepandemic planning is important, both to identify how to meet these critical community needs and to minimize the potential spread of the disease. The US Department of Health and Human Services has developed pandemic preparation checklists for governmental, community, and faith organizations. (See Appendix G for references to these checklists.)

To ensure that families have the means to comply with social distancing orders and to prevent major social upheaval, the Task Force recommended:

## Recommendation 4.4:

**(a) All levels of government should ensure that individuals who are affected by isolation or quarantine orders receive needed assistance in accessing resources to meet their basic needs while they are subject to restrictions.**

**(b) Government, social relief agencies, and other community groups should coordinate efforts to address the basic subsistence needs of individuals who have been adversely affected by an influenza pandemic.**

Businesses and private organizations can also assist in promoting social distancing. Not only is it important for businesses to comply with public health orders, but it is also important for these institutions to provide continuing financial and other support to their employees, to the extent that they are financially able to do so. In their business continuity plans, businesses should identify both how they are going to take care of employees they ask to work during a pandemic as well as employees they send home during a pandemic. Businesses need to consider the impact that lost income and lost benefits might have on their employees.

**Recommendation 4.5: In developing business continuity plans, businesses should consider the impact that lost income and lost benefits will have on their employees. Businesses should strive, to the extent possible, to continue to provide financial and other assistance to their employees during an influenza pandemic.**

## Balancing the Rights of the Individual and the Need to Protect the Public

A severe influenza pandemic will be a public health crisis of enormous magnitude. The economic impact on businesses and families will be unprecedented. Government, institutions, and businesses will try to assist individuals and keep social order, but they may be overwhelmed. Ultimately, individuals and families will also need to make some sacrifices. Individuals and families can help prepare for the crisis by engaging in prepandemic planning. While every family may not have the financial resources to stockpile food or other supplies, every family can learn how to limit the spread of germs and prevent infection. Families should review the checklist to prepare to the extent possible. (See Appendix G for references to the checklist for individuals and families.)

Adults with dependent family members (either old or young) will need to develop plans for how their families' needs can be addressed if child care, school, or adult day care facilities are closed. Families may also be called upon to assume new responsibilities during a pandemic. During a pandemic there will be a shortage of healthcare workers and limited space in medical facilities; consequently, the government may ask people to take care of sick family members at home. Government and other organizations can assist in these efforts by providing the public with information about how to protect family members from becoming infected, as well as how to treat family members who are ill. Ultimately, individuals and their families have a shared responsibility with government, businesses, and community groups to prepare for an influenza pandemic, and to help, when possible, in times of crisis.

The Task Force recommends:

**Recommendation 4.6:** **Individuals have a responsibility to prepare for an influenza pandemic. They should have reserve supplies and have plans to care for family members during a pandemic. In the event of a pandemic, individuals who are capable of going without government assistance should do so. Individuals should be encouraged to help out fellow citizens during this time of crisis.**

## References

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