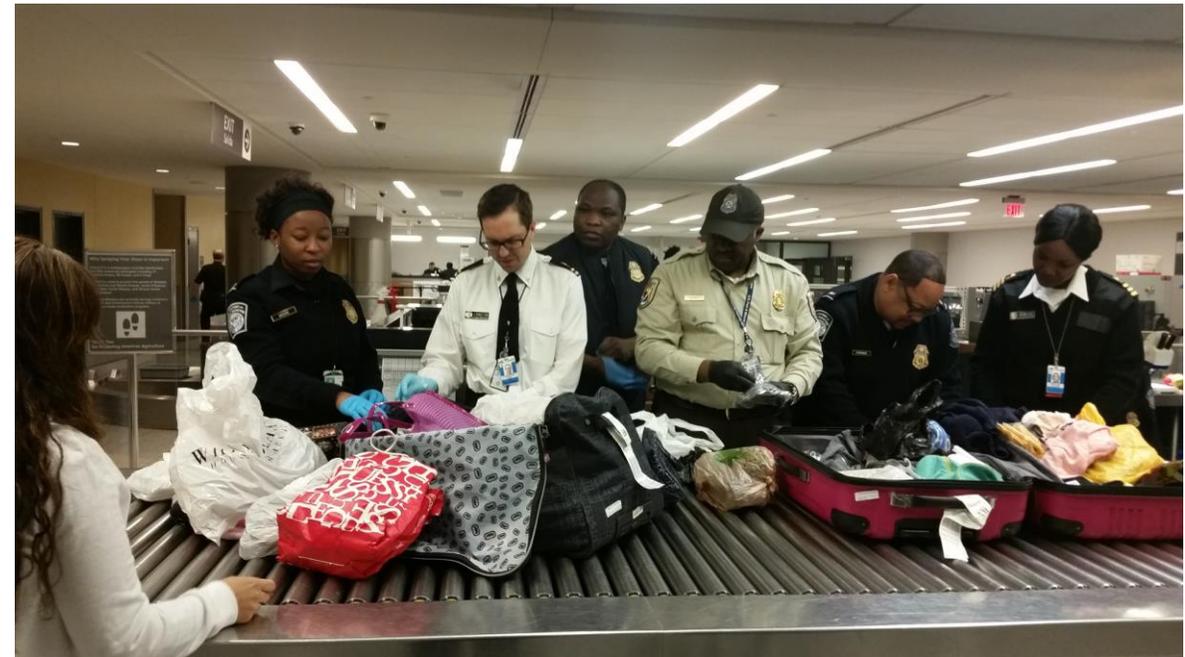


# A Strategic View of the United States Quarantine System

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Centers for Disease Control and Prevention

May 23, 2019



National Summit on Pandemic Preparedness – Judicial Branch  
Omaha, Nebraska



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# CDC's Division of Global Migration and Quarantine

## **Mission**

To reduce morbidity and mortality among immigrants, refugees, travelers, expatriates, and other globally mobile populations, and to **prevent the introduction, transmission, and spread of communicable diseases** through regulation, science, research, preparedness, and response.

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# Annual International Border Crossings into the US

▶ **>237 million**

**Land Border Crossings**



▶ **>100 million**

**International Air Arrivals**

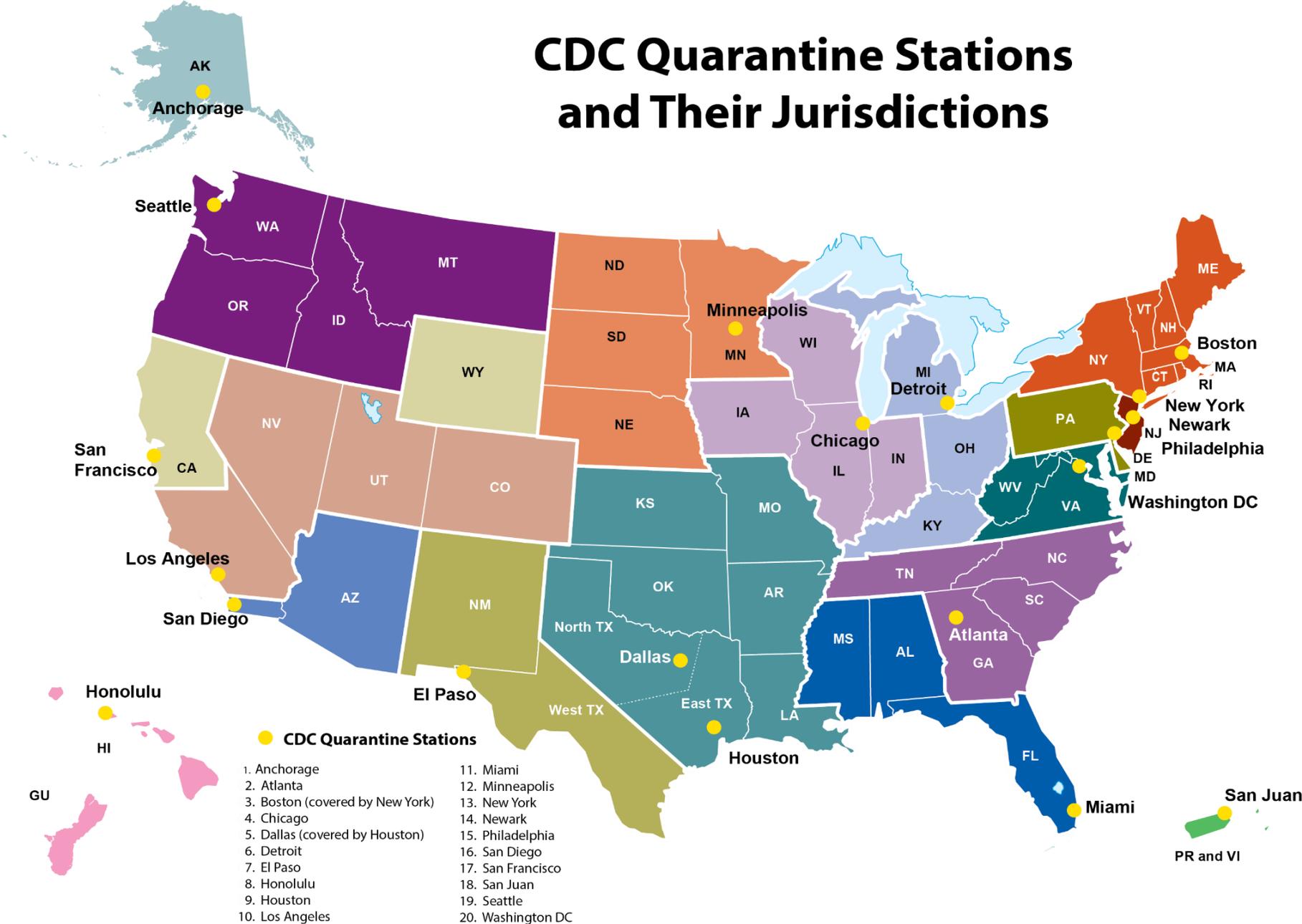


▶ **>10 million**

**Maritime Arrivals**



# CDC Quarantine Stations and Their Jurisdictions



20 Quarantine Stations

320+ total ports of entry into the U.S.

# Strategic Imperatives

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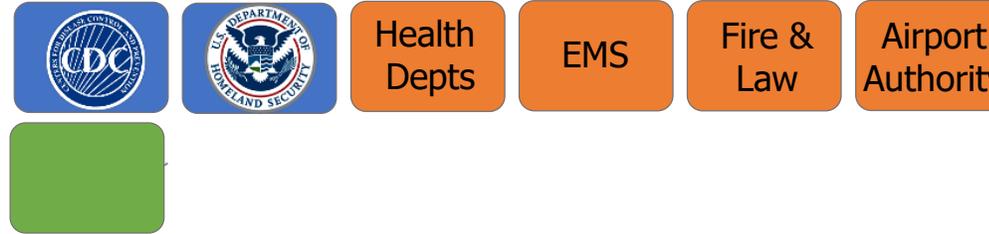
- Source control best way to protect U.S. (“Pushed Out Border”)
  - Assist other countries, WHO
  - Issue instructions for medical examinations of prospective immigrants, refugees
- Interaction at border is swift, inherent limitations
  - Need for layered, multifocal approach
    - State, local health department surveillance systems
  - Traveler communications, education
- Continuous risk assessment for public health threats
- Recognize need for partnership
  - Health sector (government, private)
  - Port-based organizations
  - Transportation industry
- Preparedness through training, after-action reviews, sharing best practices
- Risk mitigation commensurate with risk assessment, cognizant of individual choice and civil liberties in context of federalism

# Partnerships

## Port Preparedness



## Illness Response



## Occupational Health and Safety



## Aircraft Drinking Water Rule



## Food Service on Flights



# DGMQ Director's Legal Authority

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- DGMQ Director operates under delegated authority of the Public Health Service Act of 1944 (42 U.S.C. § 264)
- HHS Secretary may make and enforce regulations to prevent the spread of communicable diseases from foreign countries into the U.S. and between states and territories
- No preemption, unless a conflict with an exercise of Federal authority exists

# Statutory Authority

Apprehension, detention, or conditional release for purpose of preventing spread of quarantinable communicable disease (QCD)

## FOREIGN

- Arriving into the U.S. from a foreign country or territory
- Reasonably believed infected

## DOMESTIC

- Moving or about to move interstate or probable of infection source to others who are
- Reasonably believed infected and in qualifying stage
- Communicable stage
- Pre-communicable + likely cause public health emergency if transmitted to others

# Comparing State & Federal Quarantine & Isolation Authorities, Circumstances

## STATE/LOCAL

- Intrastate
- State's Police Power retained under 10th Amendment
- Generally any contagious disease; separate TB codes
- Exigent and non-exigent circumstances
- Local law enforcement
- Court-issued orders
- Pre-and-post detention review
- Due process through statutes, regulations, and cases
- Extensive case law and precedent

## FEDERAL

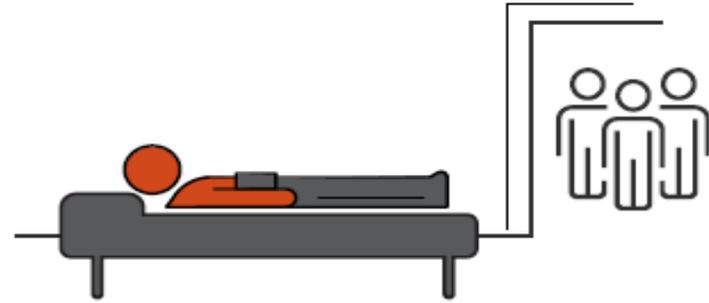
- Foreign arrivals and interstate
- Commerce Clause
- Limited to 9 communicable diseases
- Exigent, time-limited circumstances involving travel
- Primarily enforced by CBP & Coast Guard
- Orders self-executing
- Post-detention review via *habeas corpus*
- Due process through regulations
- Limited case law and precedents

CBP= Customs and Border Protection

# Isolation, Quarantine, and Conditional Release

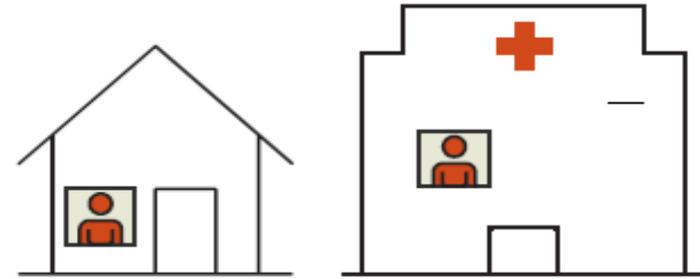
**Isolation** separates sick people who are contagious from people who are not sick.

If you are visibly sick, you may become isolated.



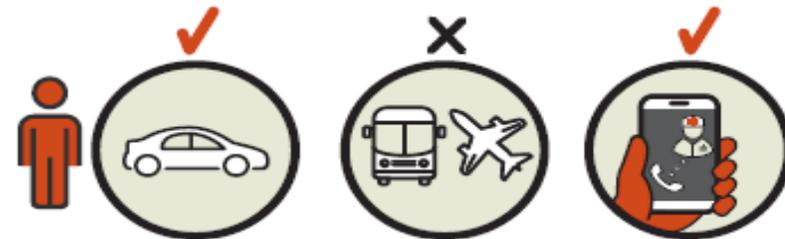
**Quarantine** separates and restricts the movement of people who were exposed while they are monitored for signs of infection.

If you are not visibly sick, but were exposed, you may become quarantined.



**Conditional release** includes temporary public health supervision of those who may have been exposed.

If you are not visibly sick but were exposed, you may be discouraged from going certain places.



# Quarantine Executive Orders

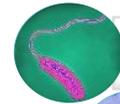
## Federally Quarantinable Communicable Diseases

Federal isolation, quarantine, and conditional release only authorized for certain communicable diseases.

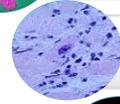
Diseases are specified by Executive Order of the President.

The President can revise the list by Executive Order, upon recommendation of the Secretary, Department of Health and Human Services.

Executive Order 13295 (from 2003) was amended by EOs 13375 (in 2005) and 13674 (in 2014).



Cholera



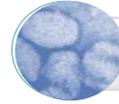
Diphtheria



Infectious Tuberculosis



Plague



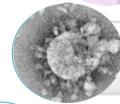
Smallpox



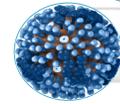
Yellow Fever



Viral Hemorrhagic Fevers



Severe Acute Respiratory Syndromes



Influenza that can cause a pandemic

As of May 23, 2019

# Apprehension & Detention

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- 42 C.F.R. §§ 70.6 & 71.32(b), 71.33
- CDC may apprehend, medically examine, quarantine, isolate, or conditional release individuals
- “*Reason to believe*” – the existence of specific articulable facts upon which a public health officer could reasonably infer that an individual has been exposed and may be harboring in his/her body the infectious agent that causes a *quarantinable communicable disease*
- CDC must arrange for adequate food and water, appropriate accommodation, appropriate medical treatment, and means of necessary communication
- Rescind once infection ruled out or person no longer contagious

# Medical Examination

- 42 C.F.R. §§ 70.12 & 71.36
- CDC may require medical examination as part of an order for quarantine, isolation, or conditional release
- CDC must advise that any medical examination will be conducted by an authorized, licensed health worker and with prior informed consent
- Medical examination means an assessment
  - Licensed health worker
  - Medical history, physical examination, collection of samples for lab testing
- Patient may be required to provide information and undergo testing, but **no compulsory medical testing, vaccination, or medical treatment**
- Individuals reasonably believed to be infected based on results of the medical examination may be isolated, or if results inconclusive or unavailable
- CDC may pay for care and treatment

# Due Process at Federal Level

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- 42 C.F.R §§ 70.14-17; 71.37-39
- CDC must serve a written Q/I/CR order explaining reasons for detention no later than 72 hours after being apprehended
- CDC must reassess order no later than 72 hours after service to ensure continued public health need and use of least restrictive means
- Right to request a medical review after reassessment
- Medical reviewer (a medical professional other than the person who issued the Q/I/CR order)
  - Appointed by CDC Director
  - Makes findings of fact
  - Issues report and recommendation to CDC Director
  - Makes own determination regarding use of the least restrictive means
- Translation and/or interpretation services provided as needed
- As a matter of practice, proceedings transcribed and held under oath

# Due Process at Federal Level

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- Right to present witnesses and testimony at the medical review
- Right to be represented
  - At person's own expense
  - If *indigent*, to have *representatives* appointed by the CDC Director at the government's expense
  - *Indigent* means income below 200% of poverty guidelines or if no income liquid assets less than 15%
- *Representatives* defined as:
  - *an attorney knowledgeable of public health practices and*
  - *physician, nurse practitioner, or similar medical professional qualified in the diagnosis and treatment of infectious diseases*
  - Attorney will generally be appointed from outside CDC
- “Final agency action” after Director reviews report and recommendation
- No impact on constitutional or statutory rights to obtain judicial review

# Update to Regulatory Authority

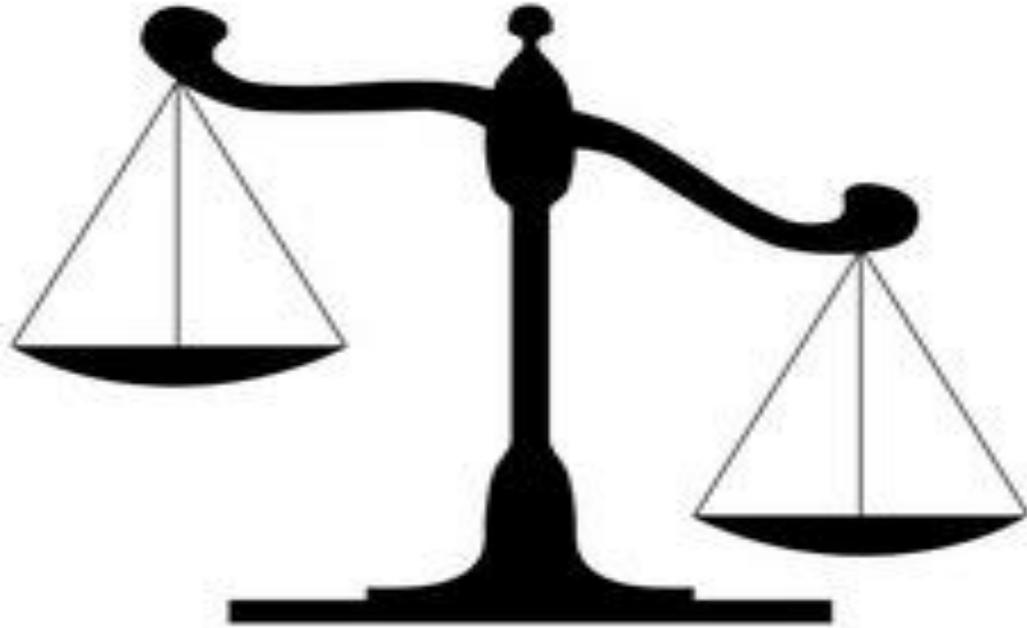
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- Effective March 21, 2017
- Domestic
  - 42 CFR §70.1 – 70.18
- International
  - 42 CFR §71.1 – 71.63

1. Data collection requirements for airlines, vessel operators
2. Strong due process protections
3. Revised definition of “*ill person*” + *illness reporting* added to domestic regulations
4. Public health measures to detect communicable disease

# Balancing Act

Protecting public  
vs.  
Individual civil  
liberties



# Federal Responsibility

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## May We? Legal Authority

- Legal authority found in statutes and regulations to take actions to protect public health
- apprehend,
  - detain, and
  - conditional release.

## Can We? Capacity

- Is there capability (resources) to use public health measures
- effectively,
  - efficiently,
  - responsibly,
  - ethically?

## Should We? Impact, Consequences Duty vs. Restraint

- Consider:
- the public health impact, proportionality, threat assessment, adverse consequences
  - process for how the govt interacts with the public, including through limits found in regulations, ethics, due process
  - obligations recognized in law that protect public health and individual rights (Constitution)—  
**least restrictive means**

# Federal Orders Issued by CDC

- Most recent quarantine order issued in 1963
  - Court upheld quarantine
- Served isolation orders have averaged less than one per year since 2005
- In most instances, federal isolation order is bridge to state order and concomitant transfer of custody
  - Median Duration Federal Order: 4 days
- Whenever possible through noncoercive ways to protect public health

# International Health Regulations

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- Legally binding international legal instrument giving rise to obligations among all 196 WHO member countries
- Originally adopted in 1969 to monitor and control six infectious diseases: cholera, plague, yellow fever, smallpox, relapsing fever and typhus
- US participates in WHO pursuant to Joint Resolution of Congress authorizing President to accept membership (22 USC § 290)
- Purpose: Maximum protection of people against the international spread of diseases, while minimizing interference with world travel and trade
- Adopted by WHO May 23, 2005; Entered into force for U.S. on July 17, 2007

# International Health Regulations

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- State Parties required to utilize existing national structures and resources to meet core capacity requirements:
  - **DETECT:** Make sure surveillance systems and laboratories can detect potential threats
  - **ASSESS:** Work together with other countries to make decisions in public health emergencies
  - **REPORT:** Report specific diseases, plus any potential international public health emergencies, to WHO through national focal point and *within 24 hours*
  - **RESPOND:** Respond to public health events
- Countries had agreed to reach the IHR goals by 2016
- Currently, only about 1/3 of countries have the ability to assess, detect, and respond to public health emergencies

# International Health Regulations

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- A “PHEIC” is an event that poses a public-health risk through international disease spread and may need a coordinated response
  - List of diseases leading to immediate notification of WHO:
    - Smallpox, SARS, wild-type polio viruses, new subtype human influenza
  - Use of an algorithm\* to determine if WHO notification indicated
    - Cholera, plague, yellow fever, viral hemorrhagic fevers, West Nile virus, other diseases of special or regional concern
  - Use algorithm\* for other events that may constitute a PHEIC
    - Is public health impact serious?
    - Is event unusual or unexpected?
    - Significant risk of international spread?
    - Significant risk of international travel and trade restrictions?

\* Annex II of the IHR.

PHEIC= Public health emergency of international concern.

# International Health Regulations

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- WHO may recommend measures to respond to a PHEIC, including:
  - No specific health measures;
  - Review travel history
  - Require proof of medical examination or vaccination
  - Implement exit screening or restrictions on persons from affected areas
  - Refuse entry to affected travelers or conveyances
  - Implement isolation, quarantine, or other health measures
- State parties may apply “additional measures” that achieve same or greater level of protection than WHO recommendations
  - Not more restrictive or invasive than reasonably available alternatives
  - Based on scientific principles and available scientific evidence
  - Notify WHO within 48 hours; review measures every 3 months

PHEIC= Public health emergency of international concern



For more information, contact CDC  
1-800-CDC-INFO (232-4636)  
TTY: 1-888-232-6348 [www.cdc.gov](http://www.cdc.gov)

Thank you.

The findings and conclusions in this report are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention.

