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Title 20 - Military and Civil Defense

Chapter 31. EMERGENCY MANAGEMENT

Subchapter V. Public Health Emergencies

§ 3136. Isolation and quarantine during public health emergency.

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§ 3136. Isolation and quarantine during public health emergency.

The following isolation and quarantine procedures shall be in effect during a state of emergency:

- (1) General authority. — The public safety authority may exercise, for such period as the state of emergency exists, the following emergency powers over persons:
 - a. To establish and maintain places of isolation and quarantine;
 - b. To isolate and quarantine individuals subject to the procedures enumerated in this section; and
 - c. To require isolation or quarantine of any person by the least restrictive means necessary to protect the public health, subject to the other provisions of this section. All

reasonable means shall be taken to prevent the transmission of infection among the isolated or quarantined individuals.

(2) Standard for quarantine or isolation. — a. Persons shall be isolated or quarantined if it is determined by clear and convincing evidence that the person to be isolated or quarantined poses a significant risk of transmitting a disease to others with serious consequences. A person's refusal to accept medical examination, vaccination or treatment pursuant to §§ 3135 and 3137 of this title shall constitute prima facie evidence that said person should be quarantined or isolated.

b. Isolation or quarantine of any person shall be terminated when such person no longer poses a significant risk of transmitting a disease to others with serious consequences.

(3) Character of isolation and quarantine area. — a. To the extent possible, the premises in which persons are isolated or quarantined shall be maintained in safe and hygienic manners designed to minimize the likelihood of further transmission of infection or other harm to persons subject to isolation or quarantine. Adequate food, clothing, medication and other necessities and competent medical care shall be provided.

b. Isolated individuals must be confined separately from quarantined individuals.

c. The health status of isolated and quarantined individuals must be monitored regularly to determine if their status should change. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease, the individual must promptly be moved to isolation.

(4) Control of quarantine and isolation area. — a. A person subject to isolation or quarantine shall obey the public safety authority's rules and orders, shall not go beyond the isolation or quarantine premises, and shall not put himself or herself in contact with any person not subject to isolation or quarantine other than a physician or other health care provider, public health authority, or person authorized to enter isolation or quarantine premises by the public safety authority. Any person entering isolation or quarantine premises may be isolated or quarantined.

b. No person, other than a person authorized by the public safety authority, shall enter isolation or quarantine premises. If by reason of an unauthorized entry into an isolation or quarantine premises, the person poses a danger to public health, that person may be subject to isolation or quarantine pursuant to the provisions of this section.

(5) Procedures for isolation and quarantine. — The following procedures shall protect the due process rights of individuals:

a. The public safety authority shall petition the Superior Court for an order authorizing the isolation or quarantine of an individual or groups of individuals.

b. A petition pursuant to paragraph (5)a. of this section shall specify the following:

1. The identity of the individual or group of individuals subject to isolation or quarantine;
2. The premises subject to isolation or quarantine;
3. The date and time at which the public safety authority request isolation or quarantine to commence;
4. The suspected contagious disease, if known;
5. A statement of compliance with the conditions and principles for isolation and quarantine; and
6. A statement of the basis upon which isolation or quarantine is justified.
7. A statement of what effort, if any, has been made to give notice of the hearing to the individual or group of individuals to be isolated or quarantined, or the reason supporting the claim that notice should not be required.

c. Ex parte orders. — Before isolating or quarantining a person, the public safety authority shall obtain a written order, which may be an ex parte order, from the Superior Court authorizing such action. An order, which may be an ex parte order, shall be requested as part of a petition filed in compliance with paragraphs (5)a. and b. of this section. The Court shall grant an order, which may be an ex parte order, upon finding by clear and convincing evidence that isolation or quarantine is warranted pursuant to the provisions of this subchapter. A copy of the authorizing order shall be given to the person ordered to be isolated or quarantined, along with notification that the person has a right to a hearing under paragraph (5)e. of this section.

d. Temporary quarantine or isolation pending filing of a petition. — Notwithstanding the preceding paragraphs, the public safety authority may isolate or quarantine a person without first obtaining a written order, which may be an ex parte order, from the Court if a physician determines that any delay in the isolation or quarantine of the person would pose an immediate and severe danger to the public health. Following such

isolation or quarantine, the public health authority shall file a petition pursuant to paragraphs (5)a. through c. of this section within 24 hours. In addition, if the public safety authority exercises its powers under this paragraph (5), it must provide a written directive to the individuals or groups under temporary quarantine or isolation indicating the identities of the individuals or groups subject to the directive, the premises subject to isolation or quarantine, the date and time that the directive commences, the suspected contagious disease (if known), and a copy of § 3138 of this title.

e. Speedy hearing. — The Court shall grant a hearing within 72 hours of the filing of a petition when an individual has been isolated or quarantined pursuant to paragraph (5)c. or d. of this section.

f. Consolidation of claims. — The Court may order consolidation of individual claims into a group of claims where:

1. The number of individuals involved or to be affected is so large as to render individual participation impractical;
2. There are questions of law or fact common to the individual claims or rights to be determined;
3. The group claims or rights to be determined are typical of the affected individuals' claims or rights; and
4. The entire group will be adequately represented in the consolidation, giving due regard to the rights of affected individuals.

(6) Relief for isolated and quarantined persons. — a. On or after 10 days following a hearing as is provided for in paragraph (5)e. of this section, a person isolated or quarantined pursuant to the provisions of this section may request in writing a Court hearing to contest his or her continued isolation or quarantine. The hearing shall be held within 72 hours of receipt of such request, excluding Saturdays, Sundays and legal holidays. A request for a hearing shall not alter the order of isolation or quarantine. At the hearing, the public safety authority must show by clear and convincing evidence that continuation of the isolation or quarantine is warranted because the person poses a significant risk of transmitting a disease to others with serious consequences.

b. A person isolated or quarantined pursuant to the provisions of this section may request a hearing in the Superior Court for remedies regarding his or her treatment and

the terms and conditions of such quarantine or isolation. Upon receiving a request for either type of hearing described in this paragraph, the Court shall fix a date for a hearing. The hearing shall take place within 10 days of the receipt of the request by the Court. The request for a hearing shall not alter the order of isolation or quarantine.

c. If upon a hearing, the Court finds that the isolation or quarantine of the individual is not warranted under the provisions of this section, then the person shall be immediately released from isolation or quarantine. If the Court finds that the isolation or quarantine of the individual is not in compliance with the provisions of paragraph (3) of this section, the Court may then fashion remedies appropriate to the circumstances of the state of public health emergency and in keeping with the provisions of this section.

d. No person shall be permanently terminated from employment by a Delaware employer as a result of being isolated or quarantined pursuant to this section. However, this paragraph shall not apply to a person who has been quarantined as a result of refusing to comply with an examination, treatment or vaccination program, nor shall it apply to a person whose conduct caused the state of emergency that necessitated the isolation or quarantine.

(7) Additional due process protections. — a. A record of proceedings before the Court shall be made and retained for at least 3 years.

b. The petitioner shall have the right to be represented by counsel or other lawful representative, and the State shall provide counsel to indigent persons against whom proceedings are initiated pursuant to this subchapter.

c. The manner in which the request for a hearing is filed and acted upon will be in accordance with the existing laws and rules of the Superior Court or any such rules that are developed by the Court for use during a state of emergency, provided that hearings should be held by any means that will allow all necessary persons to participate in the event that a public health emergency makes personal appearances impractical.

73 Del. Laws, c. 355, § 13; 70 Del. Laws, c. 186, § 1;

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