Emergency Legal Preparedness Concerning Ebola: A Primer
As of February 24, 2015

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Primer Contents

• Brief Overview of the 2014 Ebola Outbreak

• International Legal Response Efforts
  o World Health Organization
  o Foreign Governments

• U.S. Legal Preparedness/Response

• Major Emerging Legal Challenges

• Emergency Legal Preparedness Resources
2014 Ebola Quick Facts

• **Transmission**: direct contact with blood or bodily fluids*, or exposure to contaminated objects of *symptomatic* persons;

• **Symptoms**: fever, headache, joint/muscle aches, weakness, diarrhea, vomiting, stomach pain, lack of appetite, abnormal bleeding (symptoms appear between 2-21 days post-exposure)

• **Fatality rate**: may exceed 40% of known cases although some data from WHO suggest the rate may far exceed this estimate

* Ebola virus may persist in seminal fluid up to 82 days after becoming symptomatic, WHO recommends male survivors are to abstain from sex for 3 months

Image source: directrelief.org; World Health Organization
The Ebola outbreak was detected in southeastern regions of Guinea in March 2014. At the time, 49 cases and 29 deaths were reported to WHO.

As of January 25, 2015, a total of 22,092 cases and 8,810 deaths were reported in Guinea, Liberia, Mail, Nigeria, Senegal, Sierra Leone, Spain, and the U.S.

As of November 19, 2014, an additional 66 cases and 49 deaths are confirmed from a different viral strain in the Democratic Republic of Congo (DRC). As of November 21, 2014 WHO declared the outbreak over.

On October 6, 2014, the first known case of Ebola contracted outside of Africa was reported in Spain.

Continued global spread of Ebola is projected absent rapid interventions.

Source: Centers for Disease Control and Prevention
WHO Ebola Case Distribution
(Guinea, Liberia, Sierra Leone, Mali as of 1/25/15)

Confirmed Cases
- 1 - 5
- 6 - 20
- 21 - 100
- 101 - 500
- 501 - 4000
- No cases reported

Number of Cases (Past 21 Days)
- 1 - 5
- 6 - 20
- 21 - 50
- 51 - 250
- 251 - 500

NEWLY INFECTED - New cases in previous 7 days (in previously uninfected areas)

Date as of:
- LI - 2015-01-25
- SL - 2015-01-25
- GL - 2015-01-25
- ML - 2015-01-26

Image source: who.int
**August 1, 2014:** “If the situation continues to deteriorate, the consequences can be catastrophic in terms of lost lives but also severe socio-economic disruption and a high risk of spread to other countries.”

**September 18, 2014:** “This is likely the greatest peacetime challenge that the United Nations and its agencies have ever faced . . . This is not just an outbreak [or] a public health crisis. This is a social crisis, a humanitarian crisis, an economic crisis, and a threat to national security well beyond the outbreak zones.”

**November 3, 2014:** “The Ebola outbreak . . . is the most severe acute public health emergency seen in modern times. . . . [H]eads of state . . . rightly attribute the outbreak’s unprecedented severity to the failure to put basic public health infrastructures in place.”

Source: telegraph.co.uk
Ethicists accept unproven interventions as potential treatment/prevention.

WHO Recommendations:
- Screen & travel restrictions

WHO Responses:
- 8/12/14: Ethicists accept unproven interventions
- 8/18/14: Creates UN Mission for Ebola Emergency Response (UNMEER)
- 9/19/14: Senegal declared “Ebola-free”
- 10/17/14: Senegal declared “Ebola-free”
- 10/23/14: Nigeria declared “Ebola-free”
- 10/20/14: 3rd meeting of the IHR Emergency Committee
- 1/21/15: 4th meeting of the IHR Emergency Committee
Declarations of Emergency

**Sierra Leone**
- State of Public Emergency
  - [7/31/14]

**Liberia**
- State of Emergency
  - [8/6/14-11/13/14]

**Nigeria**
- National Emergency
  - [8/8/14]

**Guinea**
- National Health Emergency
  - [8/13/14]
# Ebola-related Emergency Measures

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<th>EMERGENCY MEASURES</th>
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<td><strong>TOTAL</strong></td>
<td>11</td>
<td>14</td>
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Public Health Measures

Guinea

HCWs educate on Ebola prevention

Liberia

Riot police enforce quarantine

Mali

Disinfection of public transportation

Sierra Leone

Increased sanitation procedures
Select Foreign Ebola Responses

- **United Kingdom**: issued a travel advisory for affected countries; began screening air passengers from at risk countries at Heathrow airport.
- **Ivory Coast**: closed its land borders with Guinea & Liberia.
- **Spain**: set up a special ‘crisis committee’ to handle Europe's 1st Ebola case.
- **Columbia**: denied visas to anyone who has visited Sierra Leone, Liberia, Guinea, Nigeria or Senegal in the past 4 weeks.
- **Jamaica**: banned residents of Guinea, Liberia and Sierra Leone as well as persons who have transited through these countries.
- **Venezuela, Cuba, Bolivia and Ecuador**: banned travelers from Ebola nations.
- **Rwanda**: denied entry to visitors who traveled to Guinea, Liberia, Senegal, or Sierra Leone; required those in the U.S. or Spain to report their medical condition for the first 21 days of their visits.
- **Australia**: canceled non-permanent and temporary visas held by people from affected countries; will not process new visa applications.
- **Canada**: will not issue visas to residents of countries with widespread Ebola transmission.
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• **6 Americans** infected and diagnosed with Ebola in West Africa have been brought to U.S. for treatment; an additional 4 persons were diagnosed in the U.S.

• Contact tracing by federal, state, and local authorities identified hundreds of others at slight risk of exposure, lending to voluntary quarantines.

• No formal *federal* emergency declarations or other state/local declarations, although authorities in several jurisdictions have considered them.
August 1, 2014  “[EVD] is something that we take very seriously . . . We feel confident that the procedures we’ve put in place are appropriate . . . ”

August 6, 2014  “[EVD] is controllable if you have a strong public health infrastructure in place . . . this is not an airborne disease; this is one that can be controlled and contained very effectively if we use the right protocols . . . .”

October 6, 2014  “[A]s we saw in Dallas, we don’t have a lot of margin for error. If we don’t follow protocols and procedures . . . we’re putting folks in our communities at risk.”

October 28, 2014  “[S]tarting to see some progress in Liberia . . . this disease can be contained. It will be defeated. Progress is possible.”
4 Goals: (1) control the outbreak; (2) limit secondary effects on local communities and their economies; (3) coordinate a larger global response; and (4) strengthen public health infrastructure in affected countries.

International response

- Personnel: Up to 4,000 military and uniformed personnel to Liberia, 21-day quarantine ordered for all military personnel serving in Ebola stricken regions
- Healthcare Workers: Aid; Training; Recruitment; Organization
- Targeted Distribution: Treatment facilities; Protection, Testing, and Home Health Care kits; PPE; Medical supplies; Information and education

Domestic response

- Enhanced surveillance and laboratory testing in states
- ASPR/CDC guidance and checklists for states, hospitals, HCWs, flight crews, and Customs & Border Protection Officers
- U.S. military 30-person "quick-strike team" will provide direct treatment to Ebola patients inside the U.S.
Federal Public Health Responses

- 5 U.S. airports began Ebola screenings on 10/16/14
- Began active post-arrival monitoring for returning travelers on 10/27/14
- Interim guidance on managing patients, handling specimens, monitoring exposures & PPE use for HCW managing Ebola patients
- Resources for Parents, Schools, and Pediatric Healthcare Professionals

- Emergency Use Authorizations (EUAs) issued for 7 experimental assay tests
- Granted request for compassionate use exception for TKM-Ebola
- Granted Emergency Investigational New Drug Applications (EIND) for brincidofovir (CMX001)

- Announced beginning of a human safety study for possible Ebola vaccine
- Support and research on effective diagnostic and therapeutic techniques
- Announced human testing of a second Ebola vaccine is underway
- Phase 1 clinical trials indicate the vaccine is safe and prompts and immune response
Effective Ebola Response

FIVE COMPONENTS OF EFFECTIVE EBOLA RESPONSE

Incident management
- Effective incident management/EOC functioning in the 3 countries and every district within them

Treatment
- Expand isolation and treatment capacity

Burial support
- Rapidly ensure safe burial

Infection control in all health care systems
- Training, supplies, and public health monitoring

Communications
- Communicate clearly, simply, and frankly at all levels to change behaviors
Monitoring symptoms and controlling movement of individuals with potential Ebola exposure should be based on an escalating risk level classification.

**High Risk**
- Exposure to, or processing of, blood or bodily fluids of a symptomatic patient without appropriate PPE
- Direct contact with a dead body, without appropriate PPE – in an intense transmission country
- Living in same household and providing direct care to a symptomatic patient

**Some Risk**
- Direct contact with a symptomatic patient, in an intense transmission country with appropriate PPE
- Close contact with a symptomatic patient for a prolonged period of time without appropriate PPE

**Low Risk (but not zero)**
- Travel to an intense transmission country
- Briefly in same room, no contact, with a symptomatic patient
- Skin contact with a low risk patient
- Traveling on the same aircraft as a symptomatic patient

**No Risk**
- Contact with an asymptomatic patient, or an asymptomatic individual having contact with a patient
- Travel to an intense transmission country >21 days prior, or one without intense transmission
State Divergences from CDC Guidelines

Category totals as of 12/31/14:
More Restrictive: 21; Equal: 28; Less Restrictive: 0; Unclear: 4; No Policy Found: 3
Emerging Legal Issues - Topics

- Testing & Screening
- Isolation & Quarantine
- Treatment
- Transportation
- Liability
- Licensing
- Scope of Practice
- Allocations
Select Legal Issues

Privacy
Potential infringements of health information/bodily privacy

Testing & Screening
Due process procedures and 4th Amendment protections

Liability
Of HCWs, hospitals, officials, volunteers?

Social Distancing
What’s lawful as contrasted with what actually works?
Emerging Legal Issues

- Status, timing, and tracking of federal, state, and local emergency declarations
- Roles and responsibilities of federal, state, and local public health officials
- Nature of consent for use of experimental treatments
- Federal and state authority to require testing, isolation, or quarantine
- EMTALA issues for hospitals seeking to transfer prospective Ebola patients
- Potential liability related to missteps or omissions in treatment or isolation of Ebola patients
- Worker’s compensation or disability benefits for HCWs who contract Ebola
- Authority to impose formal travel restrictions
- Interjurisdictional deployment of volunteer HCWs and Ebola response teams
- Protections for job loss related to imposition of quarantine or isolation
- Employer restrictions on employees’ personal and business travel
- Extent to which employees may refuse to work due to Ebola concerns
- Potential indemnification of pharmaceutical companies producing Ebola vaccines
- Schools barring students and staff due travel related Ebola risks
- Application of HIPAA Privacy rules in Emergency Situations
Select Ebola-related Legal Actions

October 24, 2014: Class action filed against iBio, Inc. alleging it issued materially false and misleading statements to investors regarding experimental Ebola drug Zmapp.

October 28, 2014: Stephen Opayemi sued Milford Public Schools to allow his third grade daughter to return to school after a 10-day trip to Nigeria.

October 29, 2014: Class action filed against Kimberly Clark, Corp. alleging the company falsely claimed its surgical gowns offered protection against exposure to Ebola.

October 31, 2014: Maine Department of Health and Human Services sought order against nurse Kaci Hickox to enforce direct active monitoring and other steps “necessary to protect other individuals from the dangers of infection.” The court rejected the order based on a lack of clear and convincing evidence.
Emergency Preparedness Resources

- Network for Public Health Law ~ [Emergency Legal Preparedness Response](#)
- Georgetown Law O’Neill Institute ~ [The Ebola Outbreak: A Global Conversation and Resources](#)
- UPMC ~ [Center for Health Security](#)
- CDC ~ [Emergency Preparedness and Response](#)
- ASTHO ~ [Ebola Virus Disease: Information for States and Territories](#)
- NCSL ~ [State Quarantine and Isolation Statutes](#)
- NW Center for Public Health Practice ~ [Public Health Law Training Database](#)
- NACCHO ~ [Emergency Legal Preparedness Training Kit](#)
- CHEST ~ [Legal Preparedness: Care of the Critically Ill and Injured During Pandemics and Disasters: CHEST Consensus Statement](#)
Acknowledgements

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» *Questions, comments* – ask the Network for guidance or assistance on legal or policy issues

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