

NH Enforcement of COVID-19 Isolation & Quarantine Orders

The Department of Health and Human Services (DHHS) Commissioner has the authority to issue various types of orders to prevent the spread of communicable diseases.¹ The Commissioner's authority includes isolation and quarantine orders² A mandatory order requires a person who has been "diagnosed with or [is] suspected to have been exposed to" COVID-19 to isolate or quarantine.³

- "Isolation" is defined by statute as separating people who have a contagious (infectious) illness from those who do not have the contagious illness. Separation includes restriction of movement of people with a contagious illness to stop the spread of disease.⁴ Isolation is defined by DHHS as: "the separation, for the period of communicability, of infected persons from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of the infectious agent from those infected to those who are susceptible or who may spread the agent to others."⁵
- "Quarantine" is defined by statute as the separation of people who, *while not ill, have been exposed* to an infectious illness and therefore may become infectious.⁶ Quarantine is defined by the DHHS as: "the restriction of activities of well persons who have been exposed to a case of communicable disease, during its period of communicability, to prevent disease transmission during the incubation period if infection should occur."⁷

According to the NH Infectious Disease Program Health Officer's Manual, the "DPHS Communicable Disease Control Program, per order of the Commissioner of Health & Human Services, or [her] agent is the only agency that can issue a legal order of isolation or quarantine."⁸ Written orders issued under the authority cited above will state:

1. The reason for the quarantine or isolation,
2. The duration of the order, location of quarantine or isolation, and
3. Any required treatment.

As of this writing (03/29/2020), there is an apparent preference among enforcement agencies toward voluntary quarantine or isolation over mandatory orders.⁹ Guidance to enforcement agencies from the NH Attorney General directs that when DHHS discovers that a person may be infectious, a representative should inform the person of the suspected infection and tell the person to self-quarantine or self-isolate.¹⁰ A second alternative to the mandatory quarantine order

¹ RSA Chapter 141-C.

² RSA 141-C:11 and RSA 141-C:12.

³ Sample mandatory DHHS order.

⁴ RSA 141-C:2, XII.

⁵ NH DHHS, Division of Public Health, Infectious Disease Program, Health Officers Manual (2017).

⁶ RSA 141-C:2, XIII (*emphasis added*).

⁷ NH DHHS, Division of Public Health, Infectious Disease Program, Health Officers Manual (2017).

⁸ *Id.*

⁹ Law Enforcement Memorandum, NH Attorney General, 03/27/2020

¹⁰ *Id.*

is a voluntarily quarantine or isolation agreement between the DHHS and the suspected infected person.

However, it is important to note, if a person refuses or neglects to comply with lawful mandatory orders issued according to the provisions of New Hampshire's communicable disease laws (RSA Chapter 141-C), or of the rules adopted pursuant to it, that person may be charged criminally. Violation of mandatory lawful orders properly promulgated under RSA 141-C, if committed by an individual, is a misdemeanor punishable by up to one year in jail. Violation of mandatory orders by a business or organization can be charged as a felony and comes with the associated PR consequences.

A petition may be filed in the county superior court requesting that the court issue an order on behalf of DHHS (injunction) preventing specific violations of the provisions of the Communicable Disease Statute.¹¹ Such petitions would ordinarily be brought by the Attorney General or County Attorney. The court can issue those orders without hearing, if necessary, and can include an order to prohibit a class of violators committing the same or similar acts.

If a law enforcement officer discovers that a person has not self-quarantined or has violated a voluntary quarantine or isolation agreement, the NH Attorney General has directed law enforcement "not place the person in custody unless there is an unrelated legal basis to justify an arrest".¹² Law enforcement officers are directed to inform DHHS of the suspected violation and let them determine whether further action is necessary.¹³ It will be left up to officials at DHHS to determine whether to issue a mandatory isolation or quarantine order.

A mandatory isolation order would ordinarily be served by a DHHS Public Health Nurse. As circumstance around COVID-19 evolve and staffing within DHHS may run short, DHHS may ask law enforcement to serve mandatory orders under RSA 141-C without Public Health Nurse involvement. There is, however, some question as to whether such an approach would be enforceable or even advisable where it is unlikely that the law enforcement officer would be able to properly inform the person being isolated.

Any person subject to an order for isolation or quarantine may request a hearing in the superior court to contest such order.¹⁴ A person who receives a mandatory isolation or quarantine order has the right to contest the order and request a hearing by petitioning the superior court. When served with the isolation or quarantine order, the person subject to the order will be provided with a form that may be used to petition the court for review.¹⁵

¹¹ NH RSA 141-C:23.

¹² Law Enforcement Memorandum, NH Attorney General, 03/27/2020

¹³ *Id.*

¹⁴ NH RSA 141-C:

¹⁵ *Id.*