
Coates' Canons Blog: How Does North Carolina Law Provide for Communicable Disease Control Measures for Emerging Diseases Like COVID-19?

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North Carolina law requires all persons to comply with communicable disease control measures prescribed by the Commission for Public Health, an administrative rule-making body. G.S. 130A-144(f). If a person fails to comply with required control measures, public health officials may use certain public health remedies to enforce the communicable disease law's requirements.

Communicable disease control measures are disease-specific and vary depending on how a disease spreads and a host of other factors. There is no one-size-fits-all control measure that is appropriate for all diseases. In North Carolina, a detailed body of administrative law has developed to address this complicated issue, which includes statewide rules that apply to emerging diseases such as COVID-19.

"Emerging disease" is a term used to describe a disease that is new to a population. When a communicable disease is new, the measures that are needed to control its spread are likely to be initially unknown. Typically control measures must be developed—and sometimes changed—as the disease is studied and becomes better understood.

How can the required communicable disease control measures be identified in these circumstances? Read on for information about how North Carolina law provides for determining and assuring compliance with communicable disease control measures for emerging diseases.

What are communicable disease control measures and who must comply with them?

The term "communicable disease control measures" is not defined in North Carolina law, but it has the meaning the plain words imply: actions or steps intended to prevent or reduce the spread of a communicable disease within a population.

A state statute provides that "[a]ll persons shall comply with control measures ... prescribed by the Commission [for Public Health]." G.S. 130A-144(f).

How do public health officials determine what the control measures are for a particular disease?

The General Assembly has expressly authorized the North Carolina Commission for Public Health to adopt rules prescribing communicable disease control measures. G.S. 130A-144(g). The control measure rules are published in the North Carolina Administrative Code. 10A N.C.A.C. 41A .0201-.0214. The Commission has adopted rules specifying the control measures for only a few communicable diseases and conditions—namely, HIV, hepatitis B and C, sexually transmitted diseases, tuberculosis, smallpox/vaccinia, and SARS (severe acute respiratory syndrome, the condition caused by a different coronavirus that was identified in 2003).

For other communicable diseases, the Commission has adopted a rule that allows communicable disease control measures to be derived from other sources or devised by public health officials. 10A N.C.A.C. 41A .0201.

Subsection (a) of this rule provides that “the recommendations and guidelines for testing, diagnosis, treatment, follow-up, and prevention of transmission for each disease and condition specified by the American Public Health Association [APHA] in its publication, Control of Communicable Diseases Manual shall be the required control measures.” However, the “[g]uidelines and recommended actions published by the Centers for Disease Control and Prevention [CDC] shall supercede those contained in the Control of Communicable Disease Manual.” Both the APHA manual and the CDC documents are expressly incorporated by reference into the rules.

When there is a significant communicable disease event, it is a virtual certainty that the CDC will publish guidelines and recommended actions, which then serve as the source for communicable disease control measures in North Carolina under this rule.

Subsection (b) of the rule prescribes the principles public health officials must follow in interpreting and implementing the required control measures derived from subsection (a). Among other things, those principles state that control measures must be reasonably expected to decrease the risk of transmission and must be consistent with recent scientific and public health information. They also require public health officials to take into account the way the disease is transmitted. For example, for a disease that is transmitted by the airborne route, such as measles, the rules provide that physical isolation shall be required. In contrast, for a disease that is transmitted by the bloodborne route, such as hepatitis C, the rules focus on needle-sharing and other activities that may result in exposure to blood.

Subsection (b) also authorizes public health officials to devise control measures for communicable diseases and conditions for which a specific control measure is not provided by the rule, which must adhere to the same principles.

How are control measures determined for emerging diseases such as COVID-19?

When a communicable disease is new, the relevant disease control measures are derived from the documents incorporated by reference in 10A N.C.A.C. 41A .0201(a)—usually the guidelines and recommended actions published by CDC. By incorporating the CDC documents into North Carolina’s rules, the Commission for Public Health has endeavored to align required control measures with the most up-to-date scientific understanding about emerging illnesses and ensure consistent application across the state. However, this approach presents a couple of challenges.

First, CDC guidelines and recommended actions are not federal regulations and their language tends to reflect that—they often recommend but do not require; they use the word “should” but not “shall.” This can cause some confusion when they are referenced as the source for a control measure. However, the North Carolina rule states that the documents it incorporates by reference “*shall* be the required control measures” (emphasis added), which is mandatory language.

Second, while the rule specifically states the guidelines public health officials shall follow when interpreting and implementing the control measures derived from the incorporated documents, 10A N.C.A.C. 41A .0201(b), it doesn’t specify how this is to be done or by whom. Typically, the state Division of Public Health takes the lead role, in coordination with the State Health Director. When the state has provided specific guidance for how to interpret and implement CDC guidelines and recommended actions, local health departments should follow the state’s interpretations. If the Division has not provided specific guidance on a particular issue that arises in a local jurisdiction, a local health department should consult with the state for guidance. During COVID-19, this has not always been possible, in part because CDC has issued a huge volume of guidance documents—more than 1900, according to a June 29 interview with Dr. Anne Schuchat, CDC’s Principal Deputy Director ([click here to see a video of the interview](#)). If a local health director is unable to obtain the state’s guidance, the rule appears to allow the local director to interpret and implement the CDC guidelines and recommended actions, so long as the local health director abides by the principles the rule sets out.

Third, it is not unusual for CDC's guidelines and recommended actions for an emerging disease to change over time. This makes sense, as understanding of a new disease may be constantly developing. However, it may lead to confusion and pose significant communication challenges for public officials. We have seen this happen with past diseases in North Carolina. For example, at the outset of the novel H1N1 flu pandemic in 2009, CDC guidance advised school closure if any student or staff member developed the flu. This guidance was rescinded very early in the outbreak—but not before North Carolina had a school closure that was based on the guidance. With COVID-19, we have seen a great deal of evolution in issues ranging from the recommendations for who should be tested, to the specific guidelines for controlling disease in congregate living settings, to the recommendations for use of masks by the general public.

Where can the different guidance documents be found?

The CDC's guidelines and recommended actions for COVID-19 can be found at <https://www.cdc.gov/coronavirus/2019-ncov/index.html>. The website recently added a search box and menu bars that have made it somewhat easier to navigate, but it is still pretty daunting. Most of the matters I get asked about are addressed in documents that are under one of two menu headings:

- Community, Work, and School: includes guidance documents for workplaces, schools, recreational facilities, first responders, and more.
- Health Departments: includes information about infection control, contact tracing, community mitigation, and more.

North Carolina COVID-19 information is available at <https://covid19.ncdhhs.gov/>. There is a specific menu bar for the state's guidance documents. You can also find the state's data dashboard, which is updated daily, on this site.

What is the role of the local health director in assuring compliance with control measures?

Local health directors are responsible for ensuring that control measures are "given." G.S. 130A-144(e). In practice, this often simply means ensuring that people are informed about the control measures they are subject to.

Health directors also have tools at their disposal to enforce communicable disease control measures that are required by the rules. This is one of many reasons it's important to know the sources of law for identifying control measures, and where to find the relevant guidance documents.

Over the past few months, one of the questions I've been asked most frequently has been whether a local health director may require an action in order to control the spread of COVID-19 in the health director's jurisdiction. I've typically responded that a health director may require compliance with communicable disease control measures that are required by law. (If a specific action is not a required control measure under the state communicable disease laws, then a local health director *might* have other authorities that may be exercised, but that is a highly fact-specific inquiry.) However, it may be possible for another local government official or body to order the action under emergency management laws. We have seen this play out several times with COVID-19 in North Carolina, as local emergency management orders have been used to require actions ranging from stay-at-home orders to the use of face coverings. Early in the pandemic, my colleague Norma Houston wrote an excellent summary of who has which emergency authorities at the local level. The pandemic has certainly illustrated how important it is that actions taken by public health officials be coordinated with emergency management, and vice versa.

How can a local health director enforce compliance with communicable disease control measures?

A local health director may issue an isolation or quarantine order – both of which are types of control measures – when the statutory definitions in G.S. 130A-2 and the requirements of G.S. 130A-145 are satisfied. The state has developed template isolation and quarantine orders for COVID-19, which local health directors may obtain electronically. The template orders may be updated if CDC recommendations change, so local health directors should ensure that they have the most recent versions before using them. I have written about isolation and quarantine in more detail in this post and in this book chapter.

A local health director also may use public health remedies to enforce compliance with communicable disease control measures that are required by G.S. 130A-144(f) and the Commission's rules, or to enforce isolation or quarantine orders issued under G.S. 130A-145. Violation of an order or required control measure is a class 1 misdemeanor. G.S. 130A-25; 14-3



. Alternatively, a health director may seek to enforce compliance by filing an action in Superior Court for injunctive relief. G.S. 130A-18.

Links

- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_130A/GS_130A-144.pdf
- reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2041%20-%20epidemiology%20health/subchapter%20a/subchapter%20a%20rules.pdf
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- www.youtube.com/watch?v=C5c3vx0ACv8
- www.cdc.gov/coronavirus/2019-ncov/index.html
- covid19.ncdhhs.gov/
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_130A/GS_130A-2.pdf
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_130A/GS_130A-145.pdf
- www.sog.unc.edu/resources/microsites/north-carolina-public-health-law/covid-19-coronavirus
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