



## NATIONAL HEALTH FREEDOM ACTION

PMB 218, 2136 Ford Parkway  
St. Paul, MN 55116-1863  
Phone 507-663-9018, Fax 507-663-9013  
E-mail: [similars@aol.com](mailto:similars@aol.com),  
[www.nationalhealthfreedom.org](http://www.nationalhealthfreedom.org)

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### NHFA's Summary Comments on CDC Final Rule on Control of Communicable Disease February 14, 2017

**On September 9, 2016**, NHFA submitted [formal comments](#) to the CDC on its Notice of Proposed Rulemaking ([NPRM](#)) regarding Communicable Disease issued August 15, 2016. **On January 19, 2017**, the CDC issued its [Final Rule on Control of Communicable Disease](#) (Federal Register / Vol. 82, No. 12 / Thursday, January 19, 2017 / Rules and Regulations, Page 6890).

**The final rule reflects important changes made** to the proposed rule in response to overwhelming public comment. Most especially NHFA notes that all provisions regarding persons entering into “agreements” with the federal government regarding their plans to comply with federal orders have been removed. Additionally, due process language has been added in specific sections of the rule including but not limited to putting a time frame of 72 hours on the federal government’s deadline for issuing an order after an individual has been apprehended.

**The following is NHFA’s footnoted review and summary of changes and our stance on those changes:**

NHFA supports these comments made in the preamble to the final rule by CDC:

#### *“Agreements”*

HHS/CDC received many comments on the definition of Agreement, largely expressing confusion and concern that such agreements would not be truly voluntary. The intent of this provision was to provide HHS/CDC with an additional tool to facilitate cooperation from individuals in regard to recommended public health actions. In response to public comments, however, HHS/CDC has withdrawn this definition and will not issue the proposed

provisions on “Agreements.”<sup>1</sup>

and

“Due to the number of public comments received expressing confusion over this public health measure, HHS/CDC has removed the provisions on Agreements (70.18 and 71.40), and modified other provisions of the final rule (70.1, 71.1(b), and 70.5).”<sup>2</sup>

NHFA supports this change:

Changes in Section 70.1 for the definition of “Conditional Release” were made to delete the inclusion of “surveillance” and its existing legal definition and adding new language to replace as follows:

“temporary supervision by a public health official (or designee) of an individual or group, who may have been exposed to a quarantinable communicable disease to determine the risk of disease spread...”.<sup>3</sup>

Supports this change:

Changes in Section 70.1 were made to the definition of “Non-invasive” to add credential levels to the authorized health workers conducting exams to include “an individual with education and training in the field of public health” and deleting the words “physical examination” and replacing it with “visual examination” and deleting the terms “auscultation; external palpation; external measurement of blood pressure”.<sup>4</sup>

Supports this change:

Changing, in Section 70.1, the definition of Medical Representative to “representative” regarding the CDC’s appointed person to help assist an indigent individual under federal order and adding to the list of health professionals, “and an attorney who is knowledgeable of public health practices”.<sup>5</sup>

Supports this change:

In Section 70.5 regarding obtaining a permit to travel by a person under federal order, adding the following: “The Director shall respond to a request for a permit within 5 business days.”<sup>6</sup>

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<sup>1</sup> Federal Register /Vol. 82, No. 12 /Thursday, January 19, 2017 /Rules and Regulations 6901[Hereinafter CDC Final Rule].

<sup>2</sup> Id. Pg. 6918.

<sup>3</sup> Id. Pg. 6969.

<sup>4</sup> Id.

<sup>5</sup> Id. Pg. 6970.

<sup>6</sup> Id.

Supports this change:

In Section 70.5 regarding appealing a denial of a request for a travel permit, the following was added to replace the term “promptly”:

“...will issue a written response to the appeal within 3 business days, which shall constitute final agency action.”<sup>7</sup>

Notes this change:

In Section 70.5 regarding federal authority over persons in intrastate travel the following language was added:

“The Director shall consider the State or local health authority’s request for assistance and taking into consideration the risk of introduction, transmission or spread of the communicable disease, grant or deny, in his/her discretion, the request for assistance.”<sup>8</sup>

Opposes this paragraph:

Part (f) of Section 70.5 continues to reference the terms “written agreement” in the following sentence:

“The Director may additionally apply the provisions in paragraphs (a) through (c) of this section to individuals under a State or local order, or written agreements, for quarantine, isolation, or conditional release and to the conveyances that may transport such individuals,...”.<sup>9</sup>

This may be an oversight, or technical mistake, since that term was deleted throughout the document, however if not a mistake, then we would oppose.

Notes this change:

In Section 70.5 the following language has been added regarding intrastate requests:

“The Director  
shall consider the State or local health  
authority’s request for assistance and  
taking into consideration the risk of  
introduction, transmission, or spread of  
the communicable disease, grant or  
deny, in his/her discretion, the request  
for assistance.”<sup>10</sup>

Supports the addition:

A new clause was added to Section 70.6 regarding persons apprehended as follows:

“(b) The Director will arrange for adequate food and water, appropriate accommodation, appropriate medical treatment, and means of necessary communication for individuals who are apprehended or held in quarantine or isolation under this part.”<sup>11</sup>

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<sup>7</sup> Id.

<sup>8</sup> CDC Final Rule, at 6970.

<sup>9</sup> Id.

<sup>10</sup> Id. at Pg. 6971.

Supports this addition:

In Section 70.12 Medical examinations, the following has been added:

“...and shall as part of the Federal order advise the individual that the medical examination shall be conducted by an authorized and licensed health worker and with prior informed consent.”<sup>12</sup>

Supports these additions:

In Section 70.14 regarding requiring issuances of actual federal orders the following has been added:

“(5) An explanation that the Federal order will be reassessed no later than 72 hours after it has been served and an explanation of the medical review of the Federal order pursuant to this part, including the right to request a medical review, present witnesses and testimony and the medical review, and to be represented at the medical review by either an advocate (e.g. an attorney, family member, or physician) at the individual’s own expense, or if indigent, to have representatives appointed at the government’s expense;”<sup>13</sup>

and

“(7) An explanation that if a medical examination is required as part of the Federal order that the examination will be conducted by an authorized and licensed health worker, and with prior informed consent.”<sup>14</sup>

and

Regarding service of the order the following language was added: “...on the individual no later than 72 hours after the individual has been apprehended,”<sup>15</sup>

And the following two clauses were added:

“(c) The Director shall arrange for translation or interpretation services of the Federal order as needed.

(d) Nothing in this section shall affect the constitutional or statutory rights of individuals to obtain judicial review of their Federal detention.”<sup>16</sup>

Supports this addition:

Regarding Section 70.15 and the reassessment of an order the following clause was added:

“(g) The Director shall arrange for translation or interpretation services of the Federal order as needed.”<sup>17</sup>

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<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> CDC Final Rule at Pg. 6972.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

Supports this addition:

Regarding Section 70.16 and the medical review of an order the following language was added: “The written report shall include a determination regarding whether less restrictive alternatives would adequately serve to protect public health.”<sup>18</sup>

And the following clause was added:

“(q) The Director shall arrange for translation or interpretation services as needed for purposes of this section.”<sup>19</sup>

Notes this change:

In Part 71 regarding Foreign Quarantine, the definition of ill person was changed. The first proposed definition included: “(ii) Has diarrhea, defined as the occurrence in a 24-hour period of three or more loose stools or of a greater than normal (for the person) amount of loose stools; or...”

That part (ii) has been replaced with the following:

“(B) Has a fever that has persisted for more than 48 hours; or  
(C) Has acute gastroenteritis, which means either diarrhea, defined as three or more episodes of loose stools in a 24-hour period or what is above normal for the individual, or vomiting accompanied by one or more of the following: One or more episodes of loose stools in a 24-hour period, abdominal cramps, headache, muscle aches, or fever (temperature of 100.4 °F [38 °C] or greater); or...”.<sup>20</sup>

Supports this addition:

The following definition was added to the Foreign Quarantine section, Section 71.1:

“*International voyage* means:

- (i) In the case of a carrier, a voyage between ports or airports of more than one country, or a voyage between ports or airports of the same country if the ship or aircraft stopped in any other country on its voyage; or
- (ii) In the case of a person, a voyage

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<sup>18</sup> Id. at Pg. 6973.

<sup>19</sup> Id.

<sup>20</sup> CDC Final Rule at Pg. 6974.

involving entry into a country other than the country in which that person begins his/her voyage.”<sup>21</sup>

Notes this change:

Regarding Section 71.1 the definition of Medical examination, the qualifications of the person doing the assessment was added that they would have to be “licensed”.<sup>22</sup>

Supports this change:

Regarding Section 71.1 the definition of “Non-invasive” and the definition of “Representative”, the same changes were made for Foreign Quarantine as were made for Interstate Quarantine.<sup>23</sup>

Notes this change:

Regarding Section 71.1 the definitions for Foreign Quarantine the following definition was added:

“Secretary means the Secretary of Health and Human Services (HHS) or any other officer or employee of that Department to whom the authority involved has been delegated.”<sup>24</sup>

Supports this addition:

Regarding Section 71.4 for transmission of airline passenger, crew and flight information the following clause was added:

“(c) No later than February 18, 2019, the Secretary or Director will publish and seek comment on a report evaluating the burden of this section on affected entities and duplication of activities in relation to mandatory passenger data submissions to DHS/CBP. The report will specifically recommend actions that streamline and facilitate use and transmission of any duplicate information collected.”<sup>25</sup>

Supports this addition:

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<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id. at Pg. 6975.

<sup>25</sup> Id.

Regarding Section 71.5 for transmission of vessel passenger, crew, and voyage information the following clause has been added:

“(c) No later than February 21, 2019, the Secretary or Director will publish and seek comment on a report evaluating the burden of this section on affected entities and duplication of activities in relation to mandatory passenger data submissions to DHS/CBP. The report will specifically recommend actions that streamline and facilitate use and transmission of any duplicate information collected.”<sup>26</sup>

Supports this addition:

Regarding Section 71.33 Persons: Isolation and surveillance, the following clause was added:

“(a) The Director will arrange for adequate food and water, appropriate accommodation, appropriate medical treatment, and means of necessary communication for persons who are apprehended or held in isolation or quarantine under this subpart.”<sup>27</sup>

Supports this addition:

Regarding Section 71.36 Medical examinations, the following language was added:  
“...and shall as part of the Federal order advise the individual that the medical examination shall be conducted by an authorized and licensed health worker, and with prior informed consent.”<sup>28</sup>

Supports these additions:

Regarding Section 71.37 issuance of orders, the following clauses were added:

“(4) An explanation that the Federal order will be reassessed no later than 72 hours after it has been served and an explanation of the medical review of the Federal order pursuant to this part, including the right to request a medical review, present witnesses and testimony

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<sup>26</sup> CDC Final Rule at Pg. 6975.

<sup>27</sup> Id. at Pg. 6976.

<sup>28</sup> Id.

at the medical review, and to be represented at the medical review by either an advocate (e.g., an attorney, family member, or physician) at the individual's own expense, or, if indigent, to have representatives appointed at the government's expense;

and

“(6) An explanation that if a medical examination is required as part of the Federal order that the examination will be conducted by an authorized and licensed health worker, and with prior informed consent.”

Supports this addition:

Regarding Section 71.37 on service of order the following language was added:  
“...shall be served on the individual no later than 72 hours after the individual has been apprehended,”<sup>29</sup>

And the following subsections were added:

“(c) The Director shall arrange for translation or interpretation services of the Federal order as needed.  
(d) Nothing in these regulations shall affect the constitutional or statutory rights of individuals to obtain judicial review of their federal detention.”<sup>30</sup>

Supports these changes:

Regarding 71.39 on medical review, similar changes were made as were made in interstate quarantine sections regarding authorizing advocates, the conducting of telephone, audio or video conferences and other means of communication., that a written report shall include a determination regarding whether less restrictive alternatives would adequately serve to protect public health, and the arrangement for translation or interpretation services as needed.<sup>31</sup>

### **In Summary:**

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<sup>29</sup> Id.

<sup>30</sup> Id. at Pg. 6977.

<sup>31</sup> Id. at Pg. 6978.

NHFA is grateful for the changes made to the proposed rule and continues to be concerned about federal government over-reach in terms of the right of individuals to be in charge of their own person, whether it be in medical decisions, or moving about freely. NHFA will forever be vigilant and vocal regarding the right of the people of America to be free and conscientious in their persons and in their decisions regarding their persons.

Respectfully Submitted.

Diane M. Miller JD  
Director of Law and Public Policy  
National Health Freedom Action