

Obama Administration's New Quarantine Regulations

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The Obama administration is quietly dusting off an effort to impose new federal quarantine regulations, which were vigorously resisted by civil liberties organizations and the airline industry when the rules were first proposed by the Bush administration nearly four years ago.

White House officials aren't saying what their rules might ultimately require. But the previous administration proposed giving the federal government the authority to order a "provisional quarantine" of three business days — or up to six calendar days — for those suspected of having swine flu or other illnesses listed in a presidential executive order.

The Bush-era proposal would also have required airlines and cruise lines to store more information about domestic and international passengers, such as e-mail addresses, traveling companions and return flight information. The information would be subject to review by federal officials in a health emergency, though it would be voluntary for passengers to provide the data.

Opponents of the Bush administration's efforts to enforce the new guidelines insist that they still are a mistake. "It's not really going to help," said Wendy Mariner, a professor of law and public health at Boston University. "The proposals to limit liberty represent a dangerous precedent to constitutional theory, particularly when there's almost no evidence it will matter. ... It wouldn't surprise me if they try to sneak this past in August, when people are away."

The White House's Office of Management and Budget has set a September target date to complete the first major overhaul of the quarantine regulations in about three decades. That would have at least some of the rules in place if swine flu returns with a vengeance later this year, though officials are reluctant to make that link publicly.

"It's important to public health to move forward with the regulations," said Christine Pearson, a spokeswoman for the Centers for Disease Control and Prevention. "We need to update our quarantine regulations, and this final rule is an important step."

Pearson said CDC had made "changes where appropriate" to the 2005 proposals, but she did not specify those adjustments.

An OMB spokesman, Tom Gavin, confirmed the rules submitted by the CDC in June were in "an interagency review process."

Civil liberties groups and some public health experts question the value of the effort and not

just on privacy grounds — they also contend that mandatory quarantine is unlikely to be an effective tool to contain swine flu or other diseases in the modern era.

“It doesn’t surprise me that when swine flu or any other epidemic is featured prominently in the news, we see a return to quarantine and other public health regulations,” said Christopher Calabrese of the American Civil Liberties Union, which sharply criticized the Bush-era proposal as too heavy-handed. “The enemy here isn’t the American people or sick people. It’s an illness. ... Police officers with guns cannot make people obey a quarantine. In order for this to work, it has to be collaborative. They have to trust the government.”

Thus far, the Obama administration has gotten high marks from quarantine critics, particularly for rejecting suggestions that the U.S. close its border with Mexico during the initial swine flu outbreak. “The current administration quite rightfully resisted those calls,” Jennifer Nuzzo of the University of Pittsburgh’s Center for Biosecurity said.

A report in The Washington Post on Tuesday signaled that the administration may lessen some of the more stringent measures recommended for swine flu earlier this year, such as school closures. Analysts said the administration may want to hold new quarantine powers in reserve, for unforeseen situations or for diseases other than the flu.

POLITICO spoke with about a half-dozen health policy experts and travel industry representatives who submitted comments about the rules the Bush administration proposed in 2005. None of those interviewed had heard that the Obama administration was in the process of reviving the plan, though some hailed the move.

“This is great news,” said Paula Steib of the Association of State and Territorial Health Officials, which generally supported the 2005 proposals.

“I do believe that the coming flu season and the prospect of a resurgence is the reason for the rushed response,” said Georgetown law professor Lawrence Gostin. “I have been calling for the federal government to finalize the CDC regulations for a long time now. They are so antiquated that they provide insufficient powers. ... Much depends on what the final regulations actually say.”

While quarantines are sometimes imposed by state and local officials on uncooperative patients, federal quarantine has been almost unheard of in recent decades. Atlanta attorney Andrew Speaker was famously quarantined in 2007 for flying on international flights while infected with tuberculosis. The last reported federal quarantine before that was in 1963.

In recent months, American and British school groups — even New Orleans Mayor Ray Nagin — have been quarantined in China by officials targeting swine flu. “They’ve gotten a lot of criticism from public health authorities,” Nuzzo said.

In April 2003, as severe acute respiratory syndrome spread through Asia, President George W. Bush issued an executive order adding that illness to the list of diseases that are grounds for a quarantine.

In April 2005, when avian flu hit hard overseas, Bush listed “influenza caused by novel or re-emergent influenza viruses that are causing, or have the potential to cause, a pandemic.” A variety of fearsome diseases were already subject to quarantine, including cholera, infectious tuberculosis, plague, smallpox and viral hemorrhagic fevers like Ebola.

The CDC followed that November with the proposed regulations the Obama administration is now finalizing.

Bush administration officials said their proposal would have created a new appeals process for those served with quarantine orders. However, the proposed rules included no new judicial mechanism for review of quarantine orders. Those who objected to being held against their will should file habeas corpus petitions in federal court, guidance accompanying those rules suggested.

Officials said the proposed regulations focused mainly on detaining small numbers of individuals. However, the rules also discussed scenarios “when it is necessary to provisionally quarantine a large group of persons on a very short time frame.”

While any discussion of quarantine may stoke public fears of barbed wire camps filled with infected Americans or closures of international borders, public health experts said that sort of approach to H1N1 flu would not be effective.

“Particularly for flu, the disease is transmitted very rapidly. Within a few days, it’s all over the place,” Nuzzo said.

Critics also objected to a provision in the proposed rules that appeared to require anyone who knows that he or she has been exposed to or is suffering from a communicable illness to seek a “travel permit” from the director of the CDC before taking a train, a plane or even an automobile across state lines.

Agencies across the federal government are making preparations to deal with a serious flare-up of the H1N1 flu this winter. The Food and Drug Administration is overseeing expedited production of vaccines. And the military is considering a plan to give transportation and laboratory help to the Federal Emergency Management Agency in the event of a major outbreak, CNN reported last week.

When the swine flu first grabbed headlines earlier this year, Obama administration officials deflected all questions about quarantines.

“Most quarantine authority is held at the local and state level, and we’re nowhere near that sort of a decision,” Homeland Security Secretary Janet Napolitano said at a news briefing in April.

Issuance of the new rules by the business-friendly Bush administration may have bogged down over the possible financial impact of forcing the travel industry to collect and keep more tracing data about passengers. CDC estimated that cost at between \$118 million and \$425 million.

In May, the airline industry wrote to Health and Human Services Secretary Kathleen Sebelius, asking her to enact the new quarantine rules while delaying the data collection provisions pending further review.

An HHS representative did not respond to requests for comment on the letter.

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