

Judicial Response to the Swine Flu:

Tips for Texas Courts

April 29, 2009

As most of you are aware, an outbreak of swine flu is causing concern across the world and here in Texas. As of this morning, 91 cases of swine flu have been reported in the United States, with 16 of those occurring in Texas. The first death from the disease was reported today from Houston. The World Health Organization has characterized the disease at Phase 5 on the pandemic alert scale (meaning human to human transmission). Phase 5-6 are actual pandemic outbreaks. With that in mind, this document attempts to provide Texas courts with guidance on how to prepare and respond in the event that the disease spreads further.

In anticipation of this and other potential emergencies affecting the courts in Texas, the Texas Supreme Court in late 2007 appointed a Task Force to Ensure Judicial Readiness in Times of Emergency ([Task Force](#)). The Task Force has developed an Interim Plan and is seeking resources to complete a full plan for courts to use in these types of emergencies. The interim plan does not apply directly to pandemic outbreaks, but rather to more localized disasters. To view the interim plan, visit:

<http://www.supreme.courts.state.tx.us/emtf/pdf/IntPlan072208.pdf>.

The two main goals of a judicial pandemic plan are:

1. Operating in a way that protects the health and safety of everyone at court facilities; and
2. Keeping the courts open to ensure justice for the people we serve.

Prevention

Obviously, the most important step in responding to the swine flu is prevention. The Centers for Disease Control has issued the following prevention tips:

- Cover your nose and mouth with a tissue when you cough or sneeze. Throw the tissue in the trash after you use it. If you don't have a tissue, cough or sneeze into the crook of your elbow.
- Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hand cleaners (such as Purell brand liquid hand sanitizer) are also effective.
- Avoid touching your eyes, nose or mouth. Germs spread that way.
- Try to avoid close contact with sick people.
- If you or one of your staff gets sick, that individual should stay home from work and limit contact with others to keep from infecting them.
- If you do have to come into contact with individuals who are sick with flu-like symptoms (fever, cough, sore throat, body aches, headache, chills, fatigue), consider wearing a N95 (NIOSH approved) respirator. Disposable masks are relatively inexpensive and can generally be purchased at most department stores.

Preparation

Courts should begin now to prepare for potential infection in their community. There is no need for alarm; however, being prepared will make responding easier should an outbreak in your community occur. Each court community should form a workgroup with judges and staff, and consider these suggestions to prepare:

1. For current information tune into the statewide flu epidemic call conducted by the Governor's Division of Emergency Management, daily at 3:00 pm, (866) 233-3852, room 998263#.
2. Determine what essential functions must continue if an outbreak occurs in your jurisdiction.

Essential functions are defined as court hearings that cannot be continued indefinitely. Courts should discuss which essential functions are necessary in the first 30 days, 30-90 days and 90+ days. Examples of essential functions within the first 30 days are criminal initial appearances under Article 15.17, which statutorily have to occur within 24-48 hours of arrest, and juvenile detention hearings which must be conducted by the second working day after the child is taken into custody (or first working day if the child is detained on a Friday or Saturday). However, civil jury trials might not fall into an essential function until well after 90 days. Courts should pay particular attention to whether or not to conduct jury trials, where large numbers of possibly infected people would report, increasing the chances of transmission of the disease.

3. Determine who are essential staff.

In the event of a swine flu outbreak in your community, one of the best ways to prevent the spread of the disease will be isolation. However, not all judges and court staff can stay home if court functions are to be continued. Determining in advance who would actually come to work in the event of an outbreak will be helpful.

4. Consider setting up remote work possibilities.

It may be possible for some of the staff to continue working from home. Judges might be able to conduct telephonic hearings or via videoconferencing. Staff might be able to access the court computer network remotely. Any "telecommuting" possibilities should be explored and set up in advance, as should the human resource/timekeeping issues that may be implicated.

5. Prepare for good communication with the local bar, the public, and with Austin.

If courts should have a need to close or limit services, notice should be given to the public and bar. Using the court's local website to post information may be helpful. Posting a link to Texas Courts Online (www.courts.state.tx.us) might be helpful, in the event, you are unable to update your local website. OCA will post updates as needed. If you need to have an update posted, please email Carl Reynolds (carl.reynolds@courts.state.tx.us).

6. Obtain contact information for staff and other key stakeholders.

A roster of contact information for all judges and court staff should be reviewed for accuracy. Consider obtaining multiple contact numbers and email addresses for all individuals. In addition, court leaders should obtain contact information for key justice stakeholders, including the County Judge, Sheriff, District Attorney, District Clerk, County Clerk, Adult Probation Director, Juvenile Probation Director, Bar Association President, Criminal Defense Bar President, and Public Defender (if applicable).

Action¹

Should an outbreak occur in your jurisdiction, the following information should assist your court.

Public Health Authority

Federal public health powers are vested with the President, Department of Health and Human Services and the Centers for Disease Control and Prevention. The Secretary of Health and Human Services is vested with powers to assist states in enforcing their own quarantine orders.

The power to quarantine and impose isolation is a power of the states, defined in Texas in the Health & Safety Code Chapter 81. On the local level, the local health authority (HA) is the main contact for making and implementing control measures and ensuring public safety, including quarantines. HAs must be appointed in municipalities or counties with established local health departments or public health districts, as well as in municipalities or counties receiving grants from DSHS for essential public health services. Either the Commissioner of DSHS or the local HA may establish an area quarantine and is required to notify the governing body of the affected county or municipality.

Role of the Court during a public health emergency

The role of the courts is minimal if everyone complies with the orders of DSHS and the HA. The courts' main responsibility is to hear cases and issue orders as needed when an individual does not comply with the imposed control measures, with a focus on ensuring that the proper balance is found between the protection of public health and the protection of individual liberty rights.

The following orders may be sought by the municipal, county or district attorney representing the HA or by the attorney general at the request of DSHS:

- Order for Management of Persons with Communicable Diseases
- Protective Custody Orders
- Modification of an OMPCD or Protective Custody Order
- Renewal of an Extended Management Order

Information on each of these orders (including flowcharts and sample forms/orders) is available in Chapter 4 of the publication "Control Measures and Public Health Emergencies: A Texas Bench Book" referenced above. If you need information from that publication, please contact Carl Reynolds with the Office of Court Administration.

Implementing Preparedness Plans

In the event of an outbreak, the leadership of the court (e.g. Local Administrative Judge, Court Administrator, etc) should consider implementing the pandemic preparedness plans. Consulting other key justice stakeholders should be included in this decision. Should the plan be implemented, use the information gathered from the steps listed above in the Prepare section to mitigate the effects on the

¹ Much of the information in this section is taken from the publication "Control Measures and Public Health Emergencies: A Texas Bench Book," Health Law and Policy Institute, University of Houston Law Center, 2008. Each Texas judge received a copy of this text in April 2008.

court system. Specifically, courts should only conduct essential functions listed in the 0-30 day time frame. Non-essential staff should be encouraged to stay home. Any telecommuting, teleconferencing and videoconferencing steps should be implemented. Courts should also immediately implement a communication strategy with the public and bar as identified above.

For further assistance, please contact the Office of Court Administration at 512-463-1626.