

OVERVIEW OF PUBLIC HEALTH LAW AND LOCAL HEALTH DISTRICTS

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Today's Agenda

- The enforcement of Isolation and Quarantine Orders
- Quarantine Guards
- Constitutional and Privacy Issues
- Amended Stay at Home Order
- HB 197 and Its Effect on Health District Licensing

Health Districts

- Local Health Districts
- Local Boards of Health
- Origin of Powers
- Exercise of Powers

Origin

- Tenth Amendment to the United States Constitution
- Whatever powers that are not granted to the federal government by this Constitution are hereby reserved to the individual states.
- Police powers



Police Power

- The power to protect and promote the health, safety, peace and general welfare of the people.
 - Inherent power of a sovereign government.
 - laws passed by virtue of the **police** power will be upheld if they bear a real and substantial relation to the object sought to be obtained, namely, the health, safety, morals or general welfare of the public, and are not arbitrary, discriminatory, capricious or unreasonable. *City of Cincinnati v. Correll* (1943), 141 Ohio St. 535.

Enabling Legislation

- Creates an Administrative Agency
- Grants Powers and Duties
- Ohio Revised Code Chapter 3709 - Hughes-Griswold Act of **1919**



Griswold Act

- 1919
- State divided into health districts.
- Each city shall constitute ... a **city health district**.
- The townships and villages in each county shall be combined into a health district and ... shall be known as ... a **general health district**.

Griswold Act

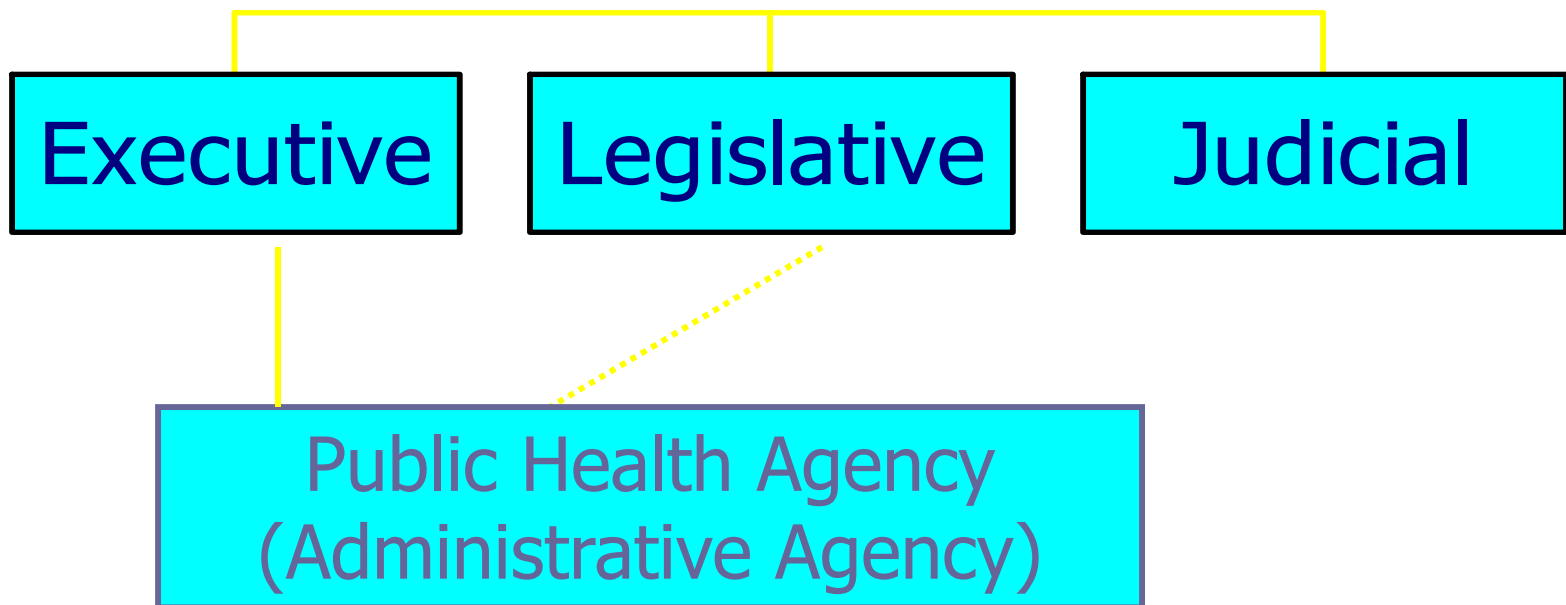
- The protection and preservation of public health are among the prime governmental concerns and functions of the state as a sovereignty, and the state, acting through the General Assembly, may enact general laws to that end.
- Legislative intent ... to create in each city a health district

STATE, ex rel. MOWRER v. UNDERWOOD et al.
(1940), 137 Ohio St. 1

Attorney General Opinion 2010-019

“Protection and preservation of public health are among the prime governmental concerns and functions of the state as a sovereignty ... Under the powers reserved to it by the Constitution, the state, acting through the General Assembly, may enact general laws to that end.” *State ex rel. Mowrer v. Underwood*, 137 Ohio St. 1, 3-4, 27 N.E.2d 773 (1940). “In accordance with this reserved power, the General Assembly first enacted the Hughes Act and later, in amended form, the Griswold Act, ... by the terms of which the state was divided into health districts.” *Mowrer*, at 4. *See also State ex rel. Cuyahoga Heights v. Zangerle*, 103 Ohio St. 566, 134 N.E. 686 (1921)

Branches of Government



RC 3709.01

- The state shall be divided into health districts. Each city constitutes a health district and shall be known as a “city health district.”
- The townships and villages in each county shall be combined into a health district and shall be known as “general health district.”



Public Health
Prevent. Promote. Protect.

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RC 3709.36 Powers and Duties

POWER.

The board of health of a city or a general health district hereby created shall exercise all the powers and perform all the duties formerly conferred and imposed by law upon the board of health of a municipal corporation, and all such powers, duties, procedure, and penalties for violation of the sanitary regulations of a board of health of a municipal corporation are transferred to the board of health of a city or general health district.

Ohio Health Districts

- There are 112 local health districts in Ohio
- There are five different kinds of health districts permitted
 - General - 3709.02
 - City - 3709.05
 - Contracting - 3709.08
 - Combined - 3709.051; 3709.052; 3709.07; 3709.071; 3709.10
 - Part of County Government - 301.24

RC 3709.22 - Duties of city or general health district

- Record prevalence of disease
- Diagnose and control communicable disease
- Medical/dental supervision of school children
- Treatment of venereal disease



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R.C. 3709.22 - cont'd



Inspect:

- schools;
- public institutions;
- jails;
- workhouse;
- children's homes;
- infirmaries;
- county homes;
- dairies;
- stores,
- restaurants;
- hotels; and
- places where food is prepared, handled, stored or offered for sale

And abate nuisances to prevent disease

General Health District Powers

As a **creature of statute**, the **board of health** of a ... general **health** district has only those powers conferred by **statute**, either expressly or by necessary implication.

2000 Op. Att'y Gen. No. 00-048, 1989 Op. Att'y Gen. No. 89-032;
1983 Op. Att'y Gen. No. 83-067.

State v. Shutaway, 2016-Ohio-432

- Orders must meet due process requirements
- Orders must put the individual on notice of the violation

No person shall be deprived of life, liberty, or property, without due process of law;

VIOLATION

RC 3707.08 Isolation and Quarantine

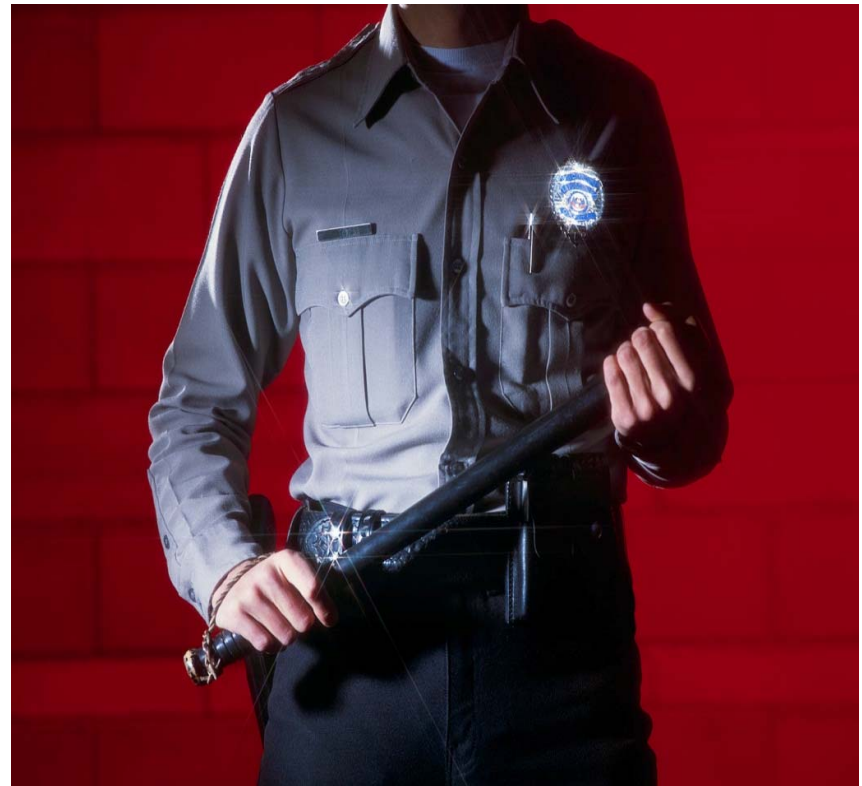
- When a person known to have been exposed to a communicable disease declared quarantinable by the board of health of a city or general health district or the department of health is reported within its jurisdiction, the board shall at once restrict such person to his place of residence or other suitable place, prohibit entrance to or exit from such place without the board's written permission in such manner as to prevent effective contact with individuals not so exposed, and enforce such restrictive measures as are prescribed by the department.
- When a person has, or is suspected of having, a communicable disease for which isolation is required by the board or the department, the board shall at once cause such person to be separated from susceptible persons in such places and under such circumstances as will prevent the conveyance of the infectious agents to susceptible persons, prohibit entrance to or exit from such places without the board's written permission, and enforce such restrictive measures as are prescribed by the department.

RC 3707.08 Isolation and Quarantine

- No person isolated or quarantined by a board shall leave the premises to which he has been restricted without the written permission of such board until released from isolation or quarantine by it in accordance with the rules and regulations of the department.
- Effective Date:
10-01-1953

RC 3707.09 Quarantine Guards

- The board of health of a city or general health district may employ as many persons as are necessary to execute its orders and properly guard any house or place containing any person affected with or exposed to a communicable disease declared quarantinable by the board or the department of health. The persons employed shall be sworn in as quarantine guards, shall have police powers, and may use all necessary means to enforce sections 3707.01 to 3707.53, inclusive, of the Revised Code, for the prevention of contagious or infectious disease, or the orders of any board made in pursuance thereof.





2012

**Public Health
and the Law**

**National Association of County and City
Health Officials**

Core Legal Components

Core Component 1

- **Scope and Breadth of Public Health Legal Authority in Emergencies**

Core Component 2

- **Emergency Public Health Powers and Duties**

Core Component 3

- **Social Distancing Measures**

Core Component 4

- **Deployment and Use of Volunteer Health Practitioners**

Core Component 5

- **Liability Issues for Individuals, Volunteers, and Entities**

Potential Emergency Powers

During a Declared Emergency Public Health Officials May Have Enhanced Powers to Respond to the Crisis.

Take Private Property



Require Vaccination or Medical Treatment



Procure and Allocate Resources



Waive Medicaid/Medicare Requirements



National Association of County and City Health Officials

- <https://www.naccho.org/blog/articles/naccho-releases-legal-preparedness-toolkit>

COVID-19 International - WHO

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a **public health emergency** of international concern. COVID-19, a respiratory disease that can result in serious illness or death and is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that has not been previously identified in humans and can easily spread from person to person

COVID-19 National

- On January 31, 2020, Alex M. Azar II, Secretary of Health and Human Services, determined and declared that a **public health emergency** exists in the United States in relation to COVID-19;
- March 13, 2020, President Trump declares public health emergency under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the “Stafford Act”).
- Declaring a national emergency would allow the government to muster additional resources to deal with the coronavirus, not to mention allow states to request a 75% federal cost-share for expenses related to mitigation efforts—including emergency workers, medical supplies, vaccinations and medical tests.

COVID-19 State of Ohio

- [03/21/20 Order to Close Facilities Providing Older Adult Day Care Services and Senior Centers](#)
- [03/20/20 Order to Cease Business Operation at Hair Salons, Day Spas, Nail Salons, \(More\)](#)
- [03/17/20 Order non-essential surgery](#)
- [03/17/20 Order to Close Polling locations](#)
- [03/17/20 Order to Limit and/or Prohibit Mass Gatherings in the State of Ohio](#)
- [03/17/20 ODH Director's Order Closure of the Polling Locations](#)
- [03/16/20 Director's Journal Entry on Updated COVID-19 Reporting Requirements](#)
- [03/15/20 Health Director Order Limit Food, Alcohol Sales to Carry Out Delivery Only](#)
- [03/15/20 Health Director Order Limit Access Jails and Detention Facilities](#)
- [03/14/20 Order the Closure of All K-12 School in the State of Ohio](#)
- [03/14/20 Health Screening for Admission to State Operated Psychiatric Hospitals or to DY S Facilities](#)
- [03/14/20 Order to Limit and/or Prohibit Mass Gatherings in the State of Ohio](#)

COVID-19 State of Ohio

- 04/02/20 Director's Stay At Home Order Amended
- 04/01/20 Order for Performing COVID-19 Testing
- 03/31/20 Order to require an inventory of all ventilators in Ohio
- 03/31/20 Order for non-congregate sheltering to be utilized throughout Ohio
- 03/30/20 Amended Order the Closure of All K-12 School in the State of Ohio
- 03/26/20 Amended Order to Close Older Adult Day Care Services and Senior Centers
- 03/25/20 Order to Close Facilities Providing Child Care Services
- 03/22/20 Order to Stay at Home
- 03/21/20 Order to Certain Entertainment Venues
- 03/21/20 Order to Prohibit Adult Day Support or Vocational Habilitation Services in a Congregate Setting

COVID-19 Local Declarations

- **Columbus Declares Public Health Emergency**
- **March 13, 2020**
- The Columbus Board of Health declared a local public health emergency giving the city extra safety measures to respond to COVID-19 cases. The declaration allows for the quarantine and isolation of individuals with the virus and as a last resort law enforcement involvement for any instances of non-compliance. The declaration also mandates testing and treatment when necessary, for instance a containment zone.
- <https://www.wcbe.org/post/columbus-declares-public-health-emergency-freeing-extra-safety-measures>

COVID-19 Local Declarations

- March 18, 2020 Franklin County Public Health
- RESOLUTION DECLARING A PUBLIC HEALTH EMERGENCY PURSUANT TO OHIO REVISED CODE SECTION 3709.21
- **WHEREAS**, the Board of Health has primary authority to enforce the provisions of sections 3707.04 to 3707.32 of the Revised Code regarding quarantine and isolation;
- **WHEREAS**, section 3707.34 of the Revised Code authorizes the Health Commissioner to act on behalf of the Board of Health in administering the provisions of sections 3707.04 to 3707.32 of the Revised Code regarding quarantine and isolation, if the Health Commissioner acts pursuant to a policy adopted by the Board of Health and circumstances have rendered a meeting of the Board of Health to be impractical or impossible or delaying the action until a meeting of the Board of Health would compromise the public health;

COVID-19 Local Declarations

- **WHEREAS**, pursuant to Resolution 04-021 and section 3707.34 of the Ohio Revised Code, a policy titled *Franklin County Board of Health Policy Relating to Delegation of Authority to Quarantine and Isolate* (“Policy”) was adopted by the Board of Health on March 9, 2004;
- **WHEREAS**, pursuant to section 3707.34(B) of the Ohio Revised Code, the District Advisory Council approved the Policy on March 24, 2004;
- **WHEREAS**, pursuant to Ohio Revised Code section 3709.21, “[i]n cases of emergency caused by epidemics of contagious or infectious diseases, or conditions or events endangering the public health, the board may declare such orders and regulations to be emergency measures, and such orders and regulations shall become effective immediately without such advertising, recording, and certifying.”

Isolation and Quarantine Orders

- March 13, 2020 ODH sent out some template orders following a conference call with attorneys for ODH
- Implementation of quarantine guards

Privacy – RC 3701.17

(B) Protected health information reported to or obtained by the director of health, the department of health, or a board of health of a city or general health district is confidential and shall not be released without the written consent of the individual who is the subject of the information unless the information is released pursuant to division (C) of this section or one of the following applies:

(4) The director determines the release of the information is necessary, based on an evaluation of relevant information, to avert or mitigate a clear threat to an individual or to the public health. Information may be released pursuant to this division only to those persons or entities necessary to control, prevent, or mitigate disease.

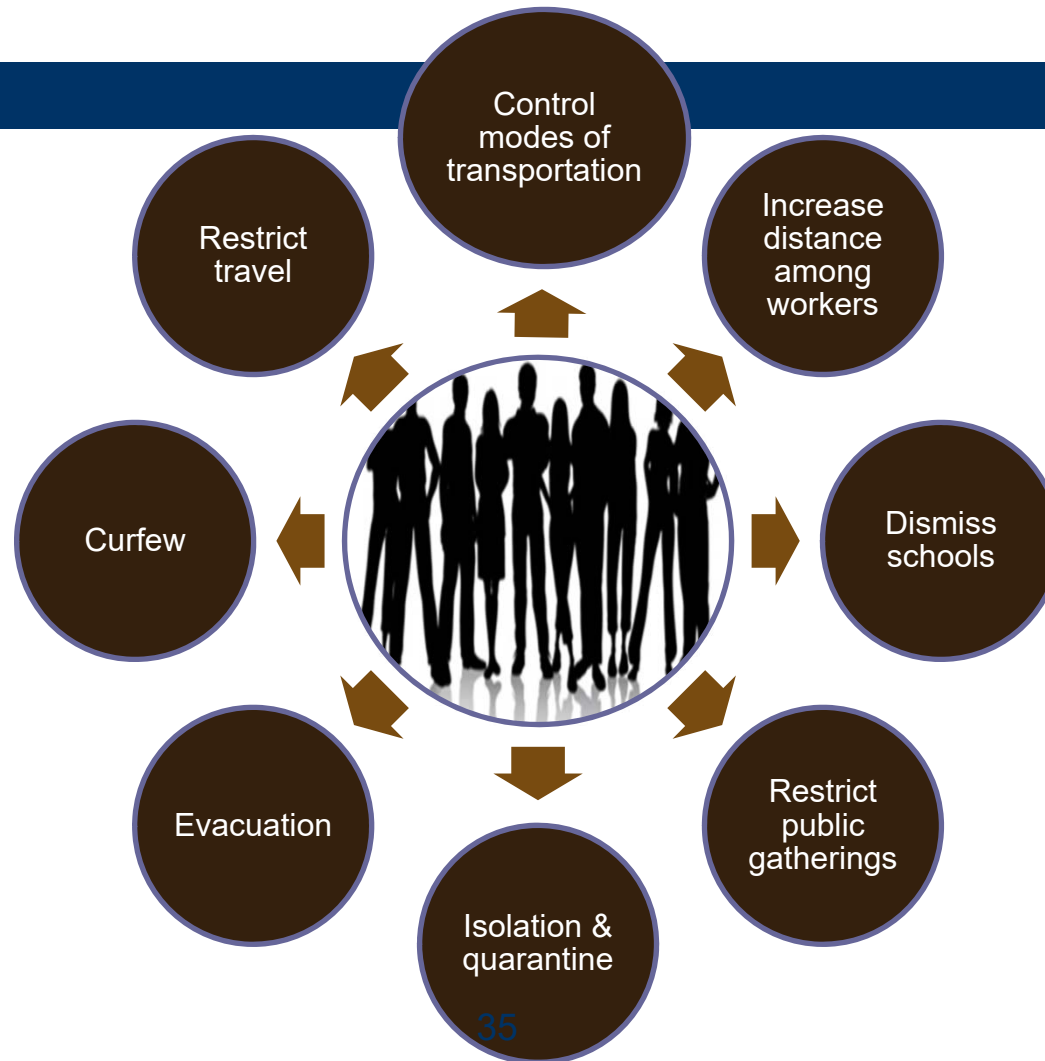
(C) Information that does not identify an individual is not protected health information and may be released in summary, statistical, or aggregate form. Information that is in a summary, statistical, or aggregate form and that does not identify an individual is a public record under section 149.43 of the Revised Code and, upon request, shall be released by the director.

Responding to Public Records Requests

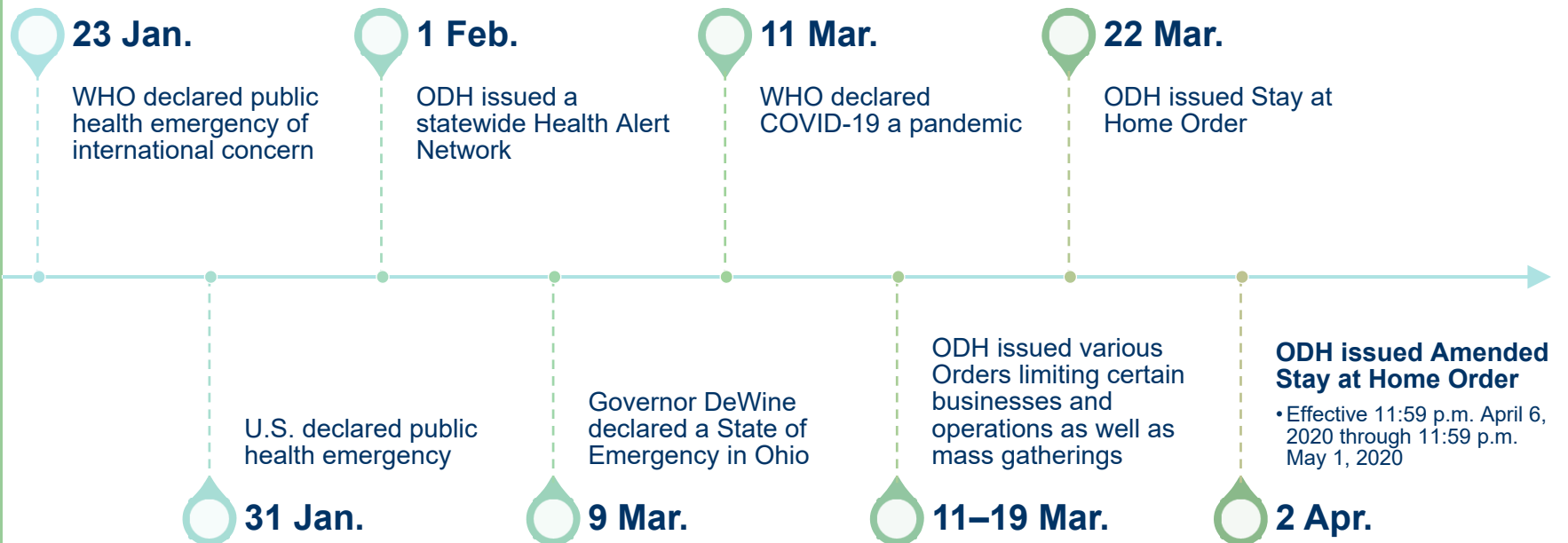
Cuyahoga Cty. Bd. Of Health v. Lipson O'Shea (February 18, 2016)

- A county board of health erred in declining to provide records to a law firm under R.C. 149.43(A)(1)(v) of the Ohio Public Records Act with respect to homes in the county where a minor child had certain elevated blood lead levels because its "blanket exemption" under R.C. 3701.17(A)(2) was inappropriate, in that many records requested contained non-excepted information, such that redaction of only protected health information was warranted with release of remaining unprotected information. Eastman & Smith Ltd.

Types of Social Distancing Measures



Amended Stay at Home Order Timeline



Amended Stay at Home Order

Stay at Home or Place of Residence

Interpretation

Further specific guidance

Exceptions

Non-essential business and operations must cease

Interpretation

Further specific guidance

Exceptions

Keep in mind...

- Authority of State and Local Health District
 - This Order does not alter or modify existing authority of the State and local health districts to issue quarantine or isolation orders or the closure of a specific location
- Intent
 - “...ensure maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19”

Part 1 - Stay at Home Order



**Stay at home
or place of
residence**



**When outside
the home, act
consistently
with **Social
Distancing
Requirements****



Home defined
- Homes or
residences
include hotels,
motels, shared
rental units,
shelters, and
similar facilities



Exceptions
-Essential
Activities
-Essential
Businesses and
Operations
-Minimum
Business
Operations

Who does this apply to?

- Applicable to all individuals currently living within the State of Ohio
- Exceptions
 1. Homeless individuals
 - But strongly urged to obtain shelter
 - Governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable. Use in operation COVID-19 risk mitigation practices recommended by the U.S. Centers for Disease Control and Prevention (CDC) and the Ohio Department of Health (ODH).
 2. Incarcerated individuals
 3. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence
 - Permitted and urged to leave their home and stay at a safe alternative location

Essential Activities



Health & Safety

- Activities/tasks essential to health or safety of an individual or family/household members or persons unable to care for themselves/leave home (including pets)
- Medical care, supplies, and medication



Necessary Supplies & Services

- Food, household products, supplies for WFH, automobile/ boat, or those necessary to maintain safety, sanitation, and essential operation of residences



Outdoor Activities

- With Social Distancing Requirements



Travel

- Related to work at an Essential Business/ Operations or Minimum Basic Operation



Caring for Others

- Including attending weddings & funerals

Prohibited Activities

- All public and private gatherings of any number of people occurring outside a single household/living unit is prohibited
- Any gathering of more than ten people is prohibited
 - Except members of the same household/residence
- Places of public amusement shall be closed
- Recreational sports tournaments, organized leagues, day camps are prohibited
- Pools shall be closed
 - Except for single household pools
- Campgrounds shall be closed
 - Except where used as a place of residence if there is genuinely no other viable alternative

Part 2 – Order to Cease Non-Essential Businesses & Operations

General order for all businesses and operations to cease all activities within the State

- Exceptions
 - Essential Businesses and Operations
 - Subject to Social Distancing Requirements (amongst employees and public)
 - Minimum Basic Operations
 - Home-based businesses where social distancing requirements can be met
 - Single person businesses if all safe workplace standards are met

Essential Businesses and Operations

- Healthcare and Public Health Organizations
 - Hospitals, clinics, dental offices, pharmacies, vets and more
 - Includes related operations, research/development, manufacturing, and supply chain
 - Specifically excludes gyms, spas, salons, barbers, tattoo parlors, and similar facilities
- Human Services Operations
 - Generally, services that offer necessities of life for individuals who are economically disadvantaged, have physical, intellectual, and/or developmental disabilities, or are otherwise needy
- Essential Infrastructure
 - Utilities, solid waste/recycling collection, transportation, food production & distribution, construction, cybersecurity, internet, telecommunications, and more
- Essential Governmental Functions
 - First responders and related functions, military, child protection, corrections, legislators, courts, and more
 - Other governmental employees working for or to support Essential Businesses/Operations
 - Doesn't apply to the federal government
- And...

More Essential Businesses & Operations...

1. CISA list per its *Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*
2. Stores that sell groceries and medicine
 - Maximum capacity to comfortably observe Social Distancing Requirements
 - Stores shall ensure proper cleaning of carts/baskets between customers
3. Food, beverage, licensed marijuana production & agriculture
 - Manufacturing, production, and similar
 - Animal shelters/rescues included
4. Charitable & social services
5. Religious entities
 - Wedding ceremonies and funerals

More Essential Businesses & Operations...

6. Media
7. First amendment protected speech
8. Gas stations and businesses needed for transportation
9. Financial/insurance institutions
10. Hardware supply stores
11. Critical trades
 - Plumbers, electricians, exterminators, security, etc.
12. Mail and shipping/delivery services

More Essential Businesses & Operations...

13. Educational institutions
 - For distance learning, critical research, and essential functions
 - Orders regarding closures still apply
14. Laundry services
15. Restaurants for consumption off-premises
16. Supplies to work from home
17. Supplies for Essential Businesses and Operations
18. Transportation

More Essential Businesses & Operations...

19. Home-based care and services
20. Residential facilities and shelters
21. Professional services
22. Manufacture, distribution, and supply for critical products and industries
23. Critical labor union functions
24. Hotels and motels
25. Funeral Services

Minimum Basic Operations

Minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or related functions

Minimum necessary activities to facilitate employees' ability to work from home

Employees must comply with Social Distancing Requirements to the extent possible

Social Distancing Requirements

- Maintain 6-foot distance, wash/sanitize hands, cover coughs/sneezes, clean high-touch surfaces, no hand shakes
- Required measures for Essential Business and Operations and Minimum Basic Operations
 - 6-foot distance
 - Hand sanitizer
 - Separate operating hours for elderly and vulnerable population
 - Online/remote access

Prohibited & Permitted Travel

- Only Essential Travel (paragraph 14) and Essential Activities permitted
- On public transit, Social Distancing Requirements apply “to the greatest extent possible”
- Interstate travel permitted for Essential Businesses and Operations and Minimum Basic Operations
- Persons entering the State intending to stay
 - “Asked” to self-quarantine for 14 days
 - COVID-19 positive, presumptively diagnosed, or exhibit symptoms per CDC screening guidance shall not enter the State
 - Unless under medical orders, transported by EMS, driving directly to provider for initial care, or permanent resident of the State
 - Not applicable to those who are regularly travelling in and out of the State as permitted

Enforcement & Penalty

R.C.
3701.352

- “No person shall violate any rule the director of health or department of health adopts or any other the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event.”

R.C.
3701.99

- “Board of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine or isolation orders, and the rules the department of health adopts.”
- Violation is misdemeanor of the second degree (up to 90 days in jail and/or up to \$750 fine)

Public Questions & Dispute Resolution

- Local health districts are authorized to answer questions/issue determinations regarding what services are prohibited under the Order
- Not required to provide advisory opinions to nongovernmental entities
- If issued determinations of different local health departments conflict, may be submitted to ODH for a final determination from a Dispute Resolution Commission

Dispute Resolution Update

- Commission Members
 - Lydia Mahalik, Commissioner
 - Director of Ohio Developmental Services Agency
 - Sheryl Maxfield, Commissioner
 - Director of the Ohio Department of Commerce
 - Sam Randazzo, Chairman
 - Chair of the Public Utilities Commission
- Commission first convened on April 8th
 - Additional information on advisory opinions in 4/8/2020 Meeting Minutes
 - Effective within 48 hours per 4/8/20 Minutes
 - Unless suspended, altered, or modified by the ODH Director
 - Final, not appealable
 - First Advisory Opinions issued

Dispute Resolution Update

- Five Advisory Opinions issued on April 8, 2020
 - Pet grooming businesses deemed non-essential (4 requests)
 - Stores that sell CBD products deemed non-essential (1 request)
- Determination not readily apparent
 - “It is the opinion of the Commission that the Trumbull County Health Department has properly interpreted or construed the Order in determining whether pet grooming businesses are essential or not essential businesses.”
 - “It is the recommendation of the Commission that the Ohio Department of Health take such action as may be necessary to cause the Mahoning County Health Department to conform its enforcement of the Order to the opinion set forth above.”
 - Check Meeting Minutes!
 - “Chairman Randazzo explained the Commission’s decision: a local health authority that has determined pet-grooming businesses to be non-essential has properly interpreted the Director of Health’s order.”

Dispute Resolution Update

- April 9, 2020 Meeting

- Beauty supply business (1 request) was pulled from the agenda
- Car washes (3 requests) were deemed essential under certain parameters
 - “...businesses providing car washing services are essential if operating within the following parameters: 1) employees have no direct interactions with customers; 2) employees do not hand-wash or hand-dry vehicles; 3) employees maintain social distancing and comply with the other requirements outlined in the Order; and 4) the number of employees is limited to only those necessary to operate the business within these parameters.”
 - Reasoning discusses ability to maintain Social Distancing Requirements more than its essential nature
- Mulch services/landscaping (1 request) was pulled from the agenda

Resources

- Amended Stay at Home Order
 - <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/public-health-orders/public-health-orders>
- *CISA's Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*
 - <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>
- Dispute Resolution
 - <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/Guidance>

HB 197, Section 11 – Licensing

- (C)(1) – “... if a person is required by law to take action to maintain the validity of a license during the period of the emergency declared by Executive Order 2020-01D, issued March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, notwithstanding the date by which action with respect to that license is required to be taken in accordance with that law, the person shall take that action not later than the sooner of either ninety days after the date the emergency ends or December 1, 2020.”
- (D) – “...a state agency, political subdivision, or official shall not take disciplinary action against a person who delays in taking action to maintain the validity of the license in accordance with division (C)(1) of this section.”
- Restaurant license renewal – March 1 deadline per R.C. 3717.23(D)

HB 197, Section 11 – Licensing contd.

- (C)(2) “...a license otherwise expiring pursuant to law during the period of the emergency declared by Executive Order 2020-01D, issued March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, notwithstanding the date on which the license expires in accordance with that law, remains valid until the earlier of either ninety days after the date the emergency ends or December 1, 2020, unless revoked, suspended, or otherwise subject to discipline or limitation under the applicable law for reasons other than delaying taking action to maintain the validity of the license in accordance with division (C)(1) of this section.”
- Pool license renewal – due April 30 per OAC 3701-31-03(B)(2) & 3701-31-04(A)(1)(c)



Thank You!



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