



Encouraging Compliance With Quarantine: A Proposal to Provide Job Security and Income Replacement

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A human influenza virus is considered the most likely source of a pandemic in the near future. Quarantine has the potential to be the most effective measure for limiting the spread of infection. The major obstacles to compliance for those asked to enter quarantine include loss of income during quarantine and loss of employment after quarantine. We discuss current antidiscrimination and compensation laws, as well as options to expand coverage for quarantined individuals to encourage public cooperation by guaranteeing job security and providing income replacement. (*Am J Public Health*. 2007;97:S49–S56. doi:10.2105/AJPH.2006.097303)

IN NOVEMBER 2005, OUT OF concern over the possible spread of avian flu in humans, President George W. Bush released the National Strategy for Pandemic Flu. The plan, which outlined measures to prepare, identify, detect, and respond to a pandemic disease threat, is intended to “provide guidance to all levels of government on the range of options for infection control and containment.”¹ The strategy lists social distancing measures for controlling and containing the spread of disease, including restrictions on large gatherings, “snow days,”

and quarantine and isolation, but it does not provide details about how these measures should be implemented.

Quarantine, the most restrictive measure, has the potential to be the most effective at limiting the spread of infection.² Its effectiveness depends on public cooperation and compliance, but there are major impediments to compliance for those asked or ordered to enter quarantine, including the loss of income during quarantine and loss of employment after quarantine. Unfortunately, the National Strategy for Pandemic Flu makes no mention of these potentially serious obstacles to voluntary compliance.¹

In the United States, authority to quarantine is vested primarily in state governments. Federal authority to order a quarantine is reserved for containment at the national borders and preventing the spread of infection between states,³ but the federal government can be expected to take the lead in setting policy for the states in the event of a pandemic. Quarantine can take place in various locations, including homes, workplaces, schools, hospitals, and other settings, and compliance may be voluntary or pursuant to a governmental order.⁴ Individuals subjected to quarantine may be reluctant to adhere to government directives to limit

their movement, because of the disruption that it creates in their daily lives.⁵ When individuals are quarantined in their own homes, they are effectively isolated from the outside world, and their livelihoods may be jeopardized.⁵ Quarantined individuals not only risk the loss of income if they become infected and miss work, they also risk losing their employment entirely because of absence or stigma related to the disease, regardless of whether they become infected. Loss of income heads the list of most frequently cited major obstacles to compliance with quarantine.^{6,7}

Because quarantine reaches its peak of effectiveness at 90% compliance,^{6,8} public cooperation with quarantine is critical in containing the spread of disease. Countries affected by severe acute respiratory syndrome (SARS) in 2003 recognized the importance of legal protections for job security and income replacement caused by quarantine and moved quickly to enact the needed legislation. It is not clear that similar legislation could be enacted so rapidly in the United States, and even if it could, having laws in place before a pandemic strikes is a much better approach. Unfortunately, there are few laws in the United States to replace the lost income of individuals during quarantine⁹ and

to provide job security after quarantine. Furthermore, no federal legislation is pending or is a part of the National Strategy for Pandemic Flu.

In this article, we discuss current job security and income replacement laws, as well as options to expand coverage for quarantined individuals. We propose measures to provide job security and income replacement to meet the basic needs of individuals in quarantine. Although many details of the income replacement program need to be developed, the purpose of the article is to raise awareness of this issue and to stimulate public health officials and policymakers to include these matters in public health emergency plans.

JOB SECURITY LAWS

Fear of infection can and has led to employment discrimination against groups of people, even when few people in those groups are actually infected or contagious.⁷ Of equal or greater concern is that employers might discharge or replace employees who missed work because they were in quarantine. Thus, without job security legislation, there is a real possibility that people might lose their livelihood during or after quarantine. In a 2006 survey, 1 in 3 Americans reported that



they would be very worried about being treated unfairly after a quarantine period.¹⁰

In 2003, to protect the job security of individuals infected with SARS or quarantined because of SARS, the government of Ontario enacted the SARS Assistance and Recovery Strategy Act, providing SARS emergency leave and protecting the jobs of people in Ontario affected by SARS-related illness, quarantine, or isolation. Employees were entitled to a leave of absence without pay if they were unable to work as a result of investigation or treatment related to SARS or because they were subjected to quarantine or isolation. The law applied to individuals sent home by their employer because of concern about SARS and those who provided care or assistance to family members for a SARS-related concern, including school closures.¹¹

Americans With Disabilities Act

The United States has laws prohibiting employment discrimination based on disability, but the laws are inapplicable to individuals in quarantine. The federal Americans with Disabilities Act of 1990 (ADA) prohibits discrimination in employment against individuals with physical or mental disabilities. To be covered under the ADA, an individual must have a physical or mental impairment that substantially limits 1 or more of the major life activities of that individual, have a record of such an impairment, or be regarded as having such an impairment.¹² This definition would not cover a healthy individual in

quarantine, because the individual would not have any impairment. The “regarded as” part of the definition also would not provide coverage, because the Supreme Court has held that the condition the individual is “regarded as” having must constitute a substantial limitation of a major life activity.¹³ Indeed, the ADA would not even cover individuals who contract and later recover from the communicable illness, regardless of whether they were in isolation, because the ADA does not apply to temporary impairments.¹⁴

Family and Medical Leave Act

The Family and Medical Leave Act provides up to 12 weeks of unpaid leave to employees with at least 12 months service and 1250 hours of work completed in the preceding year. The Family and Medical Leave Act applies to employers with 50 or more employees and state and local government agencies. The application of the Family and Medical Leave Act to quarantine is doubtful because the statute grants leave only in cases of childbirth, adoption, or “serious health condition.”¹⁵ An asymptomatic individual in quarantine would not meet this standard. The coverage is similar under several state laws.

Common Law

Another possible basis of legal protection for the job security of individuals in quarantine is the common law of wrongful discharge. A 2006 report of the Congressional Research Service provides, “If isolation or quarantine were to attempt or limit the

spread of a pandemic influenza virus and an employee was terminated because of absence from the workplace, a claim for wrongful discharge in violation of public policy might arise.”¹⁶ This statement and the accompanying discussion in the report overestimates the likelihood of success of such an action and ignores the practical limitations.

Private sector employees working without a collectively bargained or individual contract are considered employees “at will” who generally may be terminated without notice for any reason, except where doing so violates a specific statute, such as those prohibiting discrimination on the basis of race, color, religion, gender, national origin, age, disability, or other proscribed criteria. In addition, 43 states prohibit “wrongful discharge” in violation of public policy, which gives rise to a legal action in tort or contract.¹⁷ There are 4 types of public policy generally recognized by courts: refusing to commit unlawful acts, exercising a statutory right, fulfilling a public obligation, and reporting illegal activity.¹⁷ Observing quarantine during a pandemic is arguably “fulfilling a public obligation.” The cases asserting a public obligation, however, are difficult to prove and fall into a few recognized categories in which the employee is legally compelled to engage in certain conduct, such as serving on a jury, obeying a subpoena, testifying in a legal proceeding, and reporting suspected abuse of children, the elderly, patients, or institutionalized individuals.¹⁷ No court has

ever held that it violates public policy to discharge an individual because he or she missed work because of quarantine.

Even if such an approach were theoretically possible, there are practical reasons why wrongful discharge is an inadequate basis for protecting the employment rights of individuals in quarantine. First, courts might well condition protection on the individual acting pursuant to a judicial or administrative order of quarantine. Requiring numerous orders, however, would be burdensome on the public health and judicial systems in an emergency. Second, the question of whether a discharge was lawful could not be determined in advance of litigation, and individuals would be faced with the prospect of forgoing any income for months or years in the hope that a court might eventually rule in their favor. Third, the uncertainty of recovery and the relatively small amounts in dispute might make it difficult for a plaintiff to find a lawyer. Thus, common law approaches are not an attractive way of dealing with job security in the event of quarantine and do not obviate the need for a specific statute.

State Statutes

In the last 5 years, some states have enacted laws giving a measure of job security to quarantined employees.^{18–25} The laws of these states vary in coverage and protection (Table 1). Most require that the employee be under isolation or quarantine by order of a state official or judge and do not cover employees who simply



TABLE 1—Current State Job Protection Laws

State	Statute	Year Enacted	Individual Covered	Health Action Covered	Orders Required	Employer Actions Covered	Remedies	Procedures
Delaware	Del. Code Ann. tit. 20, § 3136(6)(d)	2002	Employee	Isolation and quarantine	Court order or by directive of public safety authority	Permanent termination	NS	NS
Iowa	Iowa Code § 139A.13A	2005	Employee	Quarantine	Order issued by health department or a local board of health	Discharge, taking, or failing to take action regarding a promotion or reducing wages or benefits	Reinstatement	Petition for cease and desist order and reinstatement
Kansas	Kan. Stat. Ann. § 65-129d	2005	An employee or an employee with an affected immediate family member	Isolation and quarantine	Order	Discharge	Employer guilty of criminal violation	NS
Maine	Me. Rev. Stat. Ann. tit. 26, § 875	2005	Employee and employee who needs to care for a specified family member	Investigation, supervision, or treatment related to public health emergency; isolation, quarantine, or other public health control measure; acting in accordance with extreme public health emergency order; employer request to stay home from work; employee needed to care for family member	NS	Failing to grant leave with or without pay	Civil penalty to employer up to US \$200 per violation	Must give notice to employer and Department of Labor within 6 months of occurrence
Maryland	Md. Code Ann., Health-Gen. I § 18-906(e)	2002	Employee	Isolation and quarantine	Order	Discharge	NS	NS
Minnesota	Minn. Stat. § 144.4196	2005	Employee	Isolation and quarantine	A commissioner's directive, an order of a federal quarantine officer, a state or federal court order, a written recommendation of the commissioner or designee	Discharge, discipline, threaten, penalize, or discriminate in work terms, conditions, location, or privileges	May bring a civil action for recovery of lost wages, benefits, and attorneys fees	A civil action must be brought within 180 days of the later of either the violation or quarantine or isolation period

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TABLE 1—Continued

New Jersey	NJ Rev. Stat. § 26:13-16	2005	Employee, not temporary worker	Isolation and quarantine	Order of commissioner	Discharge	Reinstatement, lost wages and attorneys' fees	Must receive a certificate of completion of isolation or quarantine period, still be qualified for position, and make application for reinstatement within 90 days of being released
New Mexico	NM Stat. Ann. § 12-10A-16	2003	Employee	Isolation and quarantine	State order, unless state can show need for action without order by proving irreparable harm	Discharge	NS	NS

Note. NS = not specified.

comply with requests for isolation or quarantine or who are caring for a family member in quarantine or isolation.

The statutory remedies provided for discharged employees also vary. Delaware and New Mexico make it unlawful to terminate a quarantined or isolated employee but do not provide a specific way for an employee to be reinstated.^{18,25} Kansas and Maine provide penalties for employers that discharge quarantined employees but make no provision for reinstatement.^{20,21} Iowa allows an employee to petition for reinstatement.¹⁹ Maine and Minnesota require this to be done through a civil action,^{21,23} leading to the same problems discussed with bringing a wrongful discharge suit. Just 2 state

statutes prohibit adverse treatment other than termination or discharge, such as failure to receive a promotion or a decrease in pay.^{19,23} Although state laws provide some protection to employees, a more comprehensive federal statute would better protect quarantined individuals.

JOB SECURITY PROPOSAL

In the United States, there is precedent for enacting laws requiring employers to provide unpaid leave for employees engaging in socially desirable activities. The 2 best examples are laws dealing with federal jury service²⁶ and military duty.²⁷ A comparable law could mandate a leave of absence and job protection for all individuals subject to

quarantine and isolation, as well as for individuals who provide services to family members in quarantine and isolation. The purpose of such job protection laws would be to remove apprehension about job loss, thereby reassuring individuals that compliance with quarantine and aiding quarantined individuals would not jeopardize their jobs. Affording protection to caregivers is as important as protecting individuals in quarantine. If caregivers cannot provide these services without risking their job security, they will be reluctant to provide care, and quarantined individuals may be induced to break quarantine to deal with their own needs.

Although the initial legislative enactments have been at the

state level, federal legislation would be simpler and more comprehensive than would a series of possibly incomplete or contradictory laws. The proposed Emergency Flu Response Act of 2004²⁸ included a National Quarantine Compensation Program, which provided for the replacement of lost wages during quarantine, afforded employees the right to their position after quarantine, and protected employees from employment discrimination. The proposed legislation had some significant limitations.

The bill failed to define “employee” or “quarantine” and appeared to provide compensation only for workers quarantined by order of a federal or state agency, leaving out those who



comply with quarantine requests and those who care for quarantined or isolated family members. The bill was intended to address concerns about the adequacy of annual influenza vaccine supplies, and as the flu season elapsed, so did the perceived urgency of enactment. Although federal legislation is preferable, in the absence of congressional action, model state legislation should be drafted for widespread consideration and enactment.

INCOME REPLACEMENT

Many people can be expected to enter quarantine voluntarily for the public good, but concern for the community alone might not be sufficient to keep enough individuals separated from society, particularly when those same individuals are faced with the prospects of unpaid bills and hungry children. To enforce compliance, every state in the United States has laws authorizing public health officials to compel individuals, under the force of law, to be quarantined.²⁹ Yet, the use of compulsory power is a burden on public health, the judiciary, and law enforcement, and it will not necessarily lead to a higher rate of compliance. In fact, history demonstrates that the use of force in quarantine has led to additional social problems.^{29,30} Even in countries considered to have a more communitarian culture and social solidarity, such as China, there still have been problems enforcing quarantine.⁷

Americans are widely believed to be much less inclined to adhere

to voluntary or compulsory quarantine measures than the residents of Canada, China, Hong Kong, Singapore, Taiwan, and Vietnam, based on our individualists and libertarian traditions.^{7,31} Similarly, Americans are less likely to support techniques for monitoring compliance with quarantine, such as video monitoring, remote medical monitoring, and electronic bracelets.¹⁰ Rather than strengthening coercive laws and practices to enforce compliance in the United States, public cooperation should be encouraged, including by guaranteeing job security and providing income replacement.

Various models of income replacement laws for quarantine have been enacted internationally (Table 2). The federal government of Canada amended its employment insurance regulations to make it easier for individuals to obtain benefits. This action allowed the unemployed and those with interrupted

employment because of quarantine to receive employment insurance benefits by removing the 2-week waiting period for benefits and removing the requirement of a medical certificate if the period for which the individual was seeking compensation was during the SARS-related 10-day quarantine period.⁶ Canada also passed a federal income relief program for health care workers who were not eligible for employment insurance. The law provided Can\$400 per week for full-time workers and Can\$200 per week for part-time⁶ workers with Can\$6000 maximum compensation available over a 15-week period.⁶

Ontario, the Canadian province most affected by SARS,⁷ enacted a similar compensation program for individuals who were sick, quarantined, or provided care to someone directly affected by SARS for at least 5 days during the SARS outbreak period and did not receive full

compensation for the pay that they lost from other sources. Some commentators have suggested that the compensation packages implemented by the Canadian and Ontario governments played a large part in the success of the voluntary quarantine program in Canada during the SARS outbreak.⁶

In Beijing, China, employers were responsible for paying the full salary and benefits of employees quarantined or placed under medical observation because of suspicion of SARS and who were subsequently confirmed not to have SARS.³² In Shanghai, China, employers were required to pay full compensation to employees when an employee was quarantined or under medical observation because of close contact with a SARS-infected individual or one suspected of having SARS, and the employee was later determined not to have SARS or when an employee was required to travel

TABLE 2—Key Provisions of International Income Replacement Laws Enacted During the SARS Epidemic

Country	Key Provisions
Canada ⁶	Amended its employment insurance regulations to make quarantined individuals eligible; passed federal income relief program providing Can \$400 per week (full time) and Can \$200 per week (part time) for health workers not eligible for employment insurance Ontario: government compensation for those within the province provided Can \$500 per week (full time) and Can \$250 per week (part time)
China ³²	Beijing and Shanghai: employers responsible for paying quarantined employees
Hong Kong ³³	Emergency Financial Assistance Scheme for Prevention of Spread of SARS provided assistance to quarantined individuals; emergency cash grants for living expenses made available to families of SARS
Singapore ³⁴	Amended workers' compensation act to include SARS patients; Home Quarantine Allowance Scheme paid US \$41 per day to those self-employed and employees of small businesses forced to close because of quarantined employees
Taiwan ³⁵	Required employers to give full paid leave to all quarantined employees; passed a federal act to compensate employers for paid leave

Note. SARS = Sudden Acute Respiratory Syndrome



to a SARS-affected area for employment reasons, placed in quarantine on return, and later determined not to have SARS.³²

In Hong Kong, the Emergency Financial Assistance Scheme for Prevention of the Spread of SARS was created for persons identified to be close contacts of SARS patients and who were placed in confinement.³³ The government also provided cash payments to families of SARS patients to pay for living expenses.

In Singapore, the government amended its workers' compensation act to include SARS. For those required to be quarantined, the government, through the Home Quarantine Allowance Scheme, paid an allowance of Singapore \$70 (US\$41) per day for self-employed persons and for employees of small businesses (defined as employing 50 or fewer persons) that were forced to close because of home quarantine of their employees. Employees under this compensation scheme were deemed to be under hospitalization leave, and their employers were reimbursed up to a maximum of US\$41 per day.³⁴ The government advised employers that the home quarantine period should be treated as paid hospital leave for their employees under the Employment Act.

In Taiwan, the government required all employers to give full paid leave to employees quarantined because of SARS. Part of a US\$50 billion SARS Emergency Relief Act went to compensating employers for SARS-related leaves.³⁵ Also, guest workers who were quarantined were paid

salaries and had their jobs secured and medical bills paid by the Taiwanese government. Individuals receiving notice of quarantine, complying with the regulations, and found not to be sick received economic assistance, including stipends in an amount equivalent to approximately US\$150.

In the United States, a portion of individuals would not suffer a total loss of income during the quarantine or isolation period because they would be covered under an existing income protection mechanism. For example, some employees would be able to use vacation days or paid sick leave on the days of their quarantine or isolation. Those quarantined at work, such as health care workers, may be entitled to regular compensation, possibly including overtime. However, dependence on current income protection mechanisms will leave many quarantined individuals without income replacement.

Workers' Compensation

Most employees in the United States are covered by workers' compensation laws that provide medical benefits and income replacement for workers with employment-related injuries or illnesses,¹⁷ but these laws are unlikely to help quarantined individuals. Individuals who are quarantined but never develop the disease have no compensable injury or illness. Even if current workers' compensation laws were amended to allow for the eligibility of healthy quarantined employees, the illness for

which quarantine is ordered would have to arise from employment. Thus, individuals would have to prove they were exposed to or contracted the disease at work.¹⁷

Unemployment Insurance

Unemployment insurance, a joint federal and state compensation program, does not require illness and is designed to provide financial assistance to individuals who are temporarily out of work because of a lawful reason and are looking for employment. To qualify for benefits, unemployed workers must meet multiple requirements that vary by state, but most require: (1) sufficient wages in the past year, (2) work for a sufficient period of time, (3) involuntary separation from employment, and (4) availability for work.³⁶ Unemployment insurance may offer some income relief, but its exclusions would effectively leave out many quarantined individuals. First, individuals are only eligible for unemployment insurance if they have actually lost their job and are actively seeking work. Therefore, it would not apply to many quarantined individuals, because they would still be employed and would not be "available" for work. Second, there are certain workers generally not covered by unemployment insurance, including the 7.4% of working adults who are self-employed.³⁷ Third, minimum employment time requirements and minimum earnings requirements exclude other people, particularly workers new to or reentering

the workforce and part-time workers.

INCOME REPLACEMENT PROPOSAL

Current laws leave a large percentage of individuals who will need to be quarantined in the event of a large-scale infectious disease outbreak without any income replacement. Because maximal compliance is vital to halting the spread of disease, economic protections must be in place. There are several options for income replacement programs, including replacing the entire amount of employees' lost wages, predetermined benefit amounts, such as in Canada and Singapore, and requiring employers to pay employees for time off, as in China and Taiwan.

The simplest and most efficient way to provide for income replacement would be to institute a flat-rate payment system. The employment income replacement programs in Canada could serve as an effective model for the United States. This model uses flat-rate weekly payments, one for full-time and a reduced rate for part-time workers, with a required minimum number of days in quarantine and a maximum number of weeks of compensation available. The Canadian program also provided for the ability to receive a greater amount, if proven that there was greater loss, up to a maximum amount.

The National Strategy Against Pandemic Influenza allocates more than 90% of spending for vaccines and antiviral medications.⁴ The remaining money is



to be used to ensure that all levels of government are prepared to respond to a pandemic outbreak.³⁸ It is difficult to predict exactly how much money will be needed to fund an income replacement program, but it is clear that federal funding will be necessary and should be a part of any plan to prepare for a future pandemic. A major pandemic would eventually empty any fund created, but quarantine is most effective, and therefore, best implemented before the widespread transmission of a disease.⁹ By the time a disease spreads extensively within the population and the quarantine compensation funds begin dwindling, the effectiveness of quarantine as a method of preventing disease transmission will likely be declining.

Implementing an effective and efficient income replacement program for individuals in quarantine will not be simple. In addition to legislative authorization and adequate funding, systems need to be designed for application and eligibility verification. Expedited procedures are essential, and they must take place without any face-to-face contact, such as through online and telephone applications and electronic fund transfers. Because of the need to enact legislation and develop implementing procedures, it is important to begin immediate action. Waiting until a pandemic strikes will be too late.

CONCLUSION

As the international experience with SARS makes clear, an

effective quarantine requires more than governmental requests or orders for large numbers of individuals to stay at home or otherwise maintain a social distance for a period of time. Economic issues, including providing job security and income replacement, must be addressed to achieve voluntary quarantine compliance rates capable of slowing or halting the spread of infection. ■

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Contributors

M.A. Rothstein originated the article and participated in all aspects of the research, analysis, and writing. M.K. Talbott had primary responsibility for the research and assisted with the analysis and writing.

Human Participant Protection

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