

## SUPPLEMENTAL APPENDIX: ANALYSIS OF MAINE'S STATUTORY QUARANTINE AUTHORITY

Maine's power to quarantine is ambiguous when a person has been merely exposed to disease and state officials have not declared a public health emergency. The state asserts authority to quarantine in regulations its health department has promulgated. Specifically, the regulations authorize "[t]reatment of those persons who have either contracted or been exposed to a notifiable condition ... on an involuntary basis pursuant to 22 M.R.S.A. §810 and 812. ..."<sup>1</sup> Later in the same section, the regulations make clear that this authorization to treat encompasses both "public health disease control measures or prescribed medical treatment ..."<sup>2</sup> and the former would include quarantine. However, it is possible the health department exceeded its statutory authority with these regulations.

Maine's statutes do authorize emergency<sup>3</sup> or longer-term court-ordered detention upon a finding that a "public health threat exists" (subject to procedural protections).<sup>4</sup> "Public health threat" is a defined term of art, meaning "any condition or behavior that can reasonably be expected to place others at a significant risk of exposure to a toxic agent or environmental hazard or infection with a notifiable disease or condition."<sup>5</sup> The statute drafters then continued by describing when "a condition poses a public health threat"<sup>6</sup> (not relevant to this analysis) and what "behavior by an infected person poses a public health threat."<sup>7</sup> By their placement in the section of the statute labeled "definitions" and as a subset of the definition of "public health threat," the most reasonable interpretation is that these are subdefinitions intended to explain what "conditions" and "behavior" can constitute a public health threat sufficient to trigger statutorily authorized communicable disease control measures.

As a result, the "behavior" part of the "public health threat" definition seems only to anticipate behavior by an "infected person." Specifically, a public health threat could exist if "[t]he infected person engages in behavior that has been demonstrated epidemiologically to create a significant risk of transmission of a communicable disease"<sup>8</sup> or if "the infected person's past behavior indicates a serious and present danger that the infected person" will create such a risk.<sup>9</sup> "Infected person" is defined in the statute as "a person who is diagnosed as having a communicable disease or who, after appropriate medical evaluation or testing, is determined to harbor an infectious agent."<sup>10</sup> "Infected person" does not appear to include an exposed person. Taken to-

gether, these provisions would suggest that a public health threat warranting detention under sections 810 and 812 exists only if a person is infected and not when a person is merely exposed—that is, that isolation but not quarantine is authorized.

This is consistent with 22 M.R.S.A. §807, which deals with procedures for the control of communicable disease. This section specifies that the "department may establish procedures ... to use in the detection, contacting, education, counseling, and treatment of individuals having or reasonably believed to have a communicable disease." Further, it specifies that the department "may designate facilities and private homes for the confinement and treatment of infected persons posing a public health threat."<sup>11</sup> The section does not explicitly address exposed persons.

On the other hand, Maine's statutes do explicitly encompass exposed persons in the context of declared public health emergencies. Section 802 delineates the powers of the state health department, including the authorization that "in the event of an actual or threatened epidemic or public health threat the department may declare that a public health emergency exists and may adopt emergency rules for the protection of the public health relating to (A) procedures for the isolation and placement of infected persons ... and (C) the establishment of temporary facilities for the care and treatment of infected or exposed persons" [emphasis added].<sup>12</sup>

Similarly, Maine's governor is empowered to declare an "extreme public health emergency."<sup>13</sup> An "extreme public health emergency" is defined as "the occurrence or imminent threat of widespread exposure to a highly infectious or toxic agent that poses an imminent threat of substantial harm to the population of the State."<sup>14</sup> Following such a declaration, the state health department has expanded statutory authority. Among other provisions, the department may "take a person into custody and order prescribed care of that person as provided by this subsection" including upon "reasonable cause to believe that the person **has been exposed to** or is at significant medical risk of transmitting a communicable disease that poses a serious and imminent risk to public health ..." [emphasis added].<sup>15</sup> "Prescribed care" is defined to explicitly include quarantine in the context of a gubernatorially declared extreme public health emergency.<sup>16</sup>

How ought one read these provisions in combination? It is telling that the statutes explicitly mention both exposed

and infected persons in the context of declared emergencies but only infected persons in other contexts. The most natural reading, therefore, is that the Maine health department has graduated statutory powers. In the absence of an emergency declaration, the department's authority reaches people who are diagnosed with a communicable disease and who pose a threat of transmission. Its authority is broader when the health department declares a health emergency or the governor declares an extreme public health emergency, and this authority explicitly includes the detention of exposed—not merely infected—persons (subject to procedural safeguards). A legislature could reasonably believe that more extensive controls are warranted only in situations of graver threat or when the health department is likely to be overwhelmed by an epidemic and an emergency has been declared accordingly. This interpretation also gives effect to the principle that legislatures intentionally choose the words they use, and, when they use different words, they intend different meanings unless context demonstrates otherwise.

On the other hand, Maine's position—that it has the power to quarantine exposed persons without an emergency declaration—is not unreasonable, and many state legislatures do grant such authority. It could be that the legislature, not being composed of epidemiologists, used vague language and intended to authorize quarantine and

other control measures for exposed persons. Our intention is not to write that Maine *should not* have such authority, only that it is unclear whether it *does*. Considering the ambiguities in Maine's statutes and the lack of appellate judicial interpretation, the legislature would be well advised to clarify the law if it did intend to grant quarantine authority over people who are merely exposed to a dangerous infectious disease.

## REFERENCES

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1. 144 Code of Maine Rules Ch. 258 §9(D)(2).
2. 144 Code of Maine Rules Ch. 258 §9(H)(1).
3. 22 Maine Revised Statutes Annotated §810.
4. 22 Maine Revised Statutes Annotated §812.
5. 22 Maine Revised Statutes Annotated §801(10).
6. 22 Maine Revised Statutes Annotated §801(10)(A).
7. 22 Maine Revised Statutes Annotated §801(10)(B).
8. 22 Maine Revised Statutes Annotated §801(10)(B)(1).
9. 22 Maine Revised Statutes Annotated §801(10)(B)(2).
10. 22 Maine Revised Statutes Annotated §801(5).
11. 22 Maine Revised Statutes Annotated §807.
12. 22 Maine Revised Statutes Annotated §802(2).
13. 22 Maine Revised Statutes Annotated §802(2-A).
14. 22 Maine Revised Statutes Annotated §802(4-A).
15. 22 Maine Revised Statutes Annotated §§820(1)(B) & 820(2)(C).
16. 22 Maine Revised Statutes Annotated §801(8-A).