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Public Health

State responds to concerns about communicable disease

January 13 — Three cases of Ebola diagnosed in Dallas since September and the recent rise in deaths from the disease in West Africa have brought international attention to the state's preparedness in responding to infectious disease. Gov. Rick Perry on October 6 announced the creation of a task force to make recommendations to state agencies and the Legislature for amending current law and policies.

Preliminary recommendations of the Texas Task Force on Infectious Disease Preparedness and Response included guidelines for monitoring health care workers returning from Ebola-endemic areas in West Africa. Other task force recommendations included expanding training for health care workers in evaluating patients with suspected Ebola infection, increasing the state's capacity for laboratory testing for Ebola independent of the federal Centers for Disease Control and Prevention, and establishing two state-designated Ebola treatment facilities — one at the University of Texas Medical Branch at Galveston and the other in North Texas operated by the UT Southwestern Medical Center, Methodist Hospital System, and Parkland Hospital System.

The task force also recommended that the Legislature authorize the commissioner of the Department of State Health Services (DSHS) to impose a temporary, enforceable control order for a person exposed to Ebola, which could allow law enforcement to quarantine the person in a health facility for up to 48 hours. Health and Safety Code, [sec. 81.083](#), currently allows DSHS or a local health authority to order a person to take control measures if the health authority has reason to believe an individual is ill with, has been exposed to, or is the carrier of a communicable disease. Violation of a control order is a class B misdemeanor, except during an area quarantine, when violation of an order from a health authority is a third-degree felony. State and Dallas County health officials successfully used a control

order on October 1 to require household members of the first Ebola patient diagnosed in Texas to stay home and not receive visitors.

Proponents of expanding the commissioner's control order authority say existing law may not be sufficient in the future to prevent a person from violating an order, leaving quarantine, and possibly infecting others after apprehension by law enforcement. A temporary, enforceable control order would be more effective in protecting public health than current law, they say, because it could allow law enforcement to immediately bring a person apprehended for violating a control order to a health facility instead of a jail, thus protecting the public from additional exposures. Proponents say a proposed 48-hour quarantine would allow enough time for a judicial or other oversight process to either extend or rescind the enforceable control order, which would protect both the public and the rights of the person subject to the order.

The task force also recommended that the state adopt non-legislative solutions to encourage compliance with control orders among quarantined health care workers. Recommendations include encouraging employers of health care workers to provide sick leave, family and medical leave, administrative leave, emergency leave, and telecommuting options when appropriate.

Beyond the preliminary recommendations, the task force's [full report](#) on December 1 recommended continuing to educate institutions and health care professionals on responding to uncommon infectious diseases, establishing a biocontainment unit specifically for infants and children, standardizing the triage protocol for patients with Ebola, stockpiling personal protective equipment, and setting guidelines for monitoring people returning to Texas from Ebola-endemic areas.

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Other key recommendations include authorizing the governor to declare a “State of Infectious Disease Emergency,” implementing state-specific guidelines for handling, testing, and quarantining pets exposed to Ebola, and authorizing DSHS to collaborate with external partners on an application for mobile phones that would allow the department to monitor in real time the temperature and symptoms of an individual who has contracted an infectious disease. The app is now in preliminary testing.

Human Services

Nursing home safety enforcement may be considered

January 13 — In response to the most serious health and safety violations at state-licensed nursing homes in Texas, the Legislature may consider enacting a “three-strikes” requirement recommended by the Sunset Advisory Commission. The proposed rule would lead to revocation of state licenses of nursing homes determined to have had three or more health and safety violations of the highest severity level within a two-year period. Proponents of the three-strikes proposal say it is needed to penalize negligent nursing homes, while opponents say it would be overly punitive. The Sunset commission is scheduled to finalize its recommendations to the Legislature on January 14.

According to a Sunset Advisory Commission [review](#) of the Department of Aging and Disability Services (DADS), the agency issues few sanctions against nursing homes for violations of health and safety, some of which are serious and repeated. In fiscal 2013, 378 state nursing home violations were assigned the highest level of severity, in which residents are considered to be in immediate jeopardy of serious harm or death. No licenses were revoked during that year.

The three-strikes rule, proposed by Sen. Charles Schwertner during an August hearing of the Sunset Advisory Commission, would require DADS to revoke the state-issued license of a nursing home that accumulated three violations or deficiencies of the highest severity level during a 24-month period. Each violation would be required to have occurred on a separate day. Debate about the proposed requirement has centered on whether additional regulation of the nursing home industry is necessary to ensure seniors in Texas are receiving high-quality care.

Supporters of the proposed three-strikes requirement say that it would protect seniors, a particularly vulnerable population.

The task force is scheduled to issue to the governor and legislative leaders at least one more report, due February 1, on its findings and recommendations.

— by *Lauren Ames*

Although most of the state’s nursing homes deliver good care, supporters say, little is being done to penalize negligent facilities. The proposed requirement appropriately would force the state to address substandard care and take timely action, rather than waiting for the federal government to intervene.

Supporters also say the three-strikes requirement would target only the worst facilities, those that are not fulfilling their charge of protecting the state’s elderly. It would not cause issues for high-quality providers because the penalty would apply only to repeat offenders, they say. The state’s nursing homes have little incentive under the current regulatory structure to make improvements, according to supporters, and penalties assigned are assessed too infrequently to spur major change in nursing home operations.

Opponents of the proposed three-strikes requirement say that nursing homes are one of the most heavily regulated sectors of the health care industry and additional layers of regulation are not necessary. DADS already has authority to oversee nursing facilities and to take enforcement actions against them, opponents say.

Nursing home staff and administrators, who are not in the business for the money, want to provide good care to residents, and the three-strikes requirement would be unnecessarily punitive, opponents say. Subjective inspections under the three-strikes requirement could result in the closure of good nursing homes if their licenses are revoked. Nursing home closures can also be disruptive and difficult for residents, opponents say, some of whom may have no other options for care.

— by *Mary Beth Schaefer*