

Section 361 of the Public Health Service (PHS) Act (42 USC 264)

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[Laws in effect as of January 3, 2005]

[Document not affected by Public Laws enacted between  
January 3, 2005 and January 18, 2007]

[CITE: 42USC264]

TITLE 42--THE PUBLIC HEALTH AND WELFARE

CHAPTER 6A--PUBLIC HEALTH SERVICE

SUBCHAPTER II--GENERAL POWERS AND DUTIES

Part G--Quarantine and Inspection

Sec. 264. Regulations to control communicable diseases

(a) Promulgation and enforcement by Surgeon General

The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

(b) Apprehension, detention, or conditional release of individuals

Regulations prescribed under this section shall not provide for the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General,\1\.

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\1\ So in original. Comma probably should not appear.

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(c) Application of regulations to persons entering from foreign countries

Except as provided in subsection (d) of this section, regulations prescribed under this section, insofar as they provide for the apprehension, detention, examination, or conditional release of

individuals, shall be applicable only to individuals coming into a State or possession from a foreign country or a possession.

(d) Apprehension and examination of persons reasonably believed to be infected

(1) Regulations prescribed under this section may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a qualifying stage and (A) to be moving or about to move from a State to another State; or (B) to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a State to another State. Such regulations may provide that if upon examination any such individual is found to be infected, he may be detained for such time and in such manner as may be reasonably necessary. For purposes of this subsection, the term ``State'' includes, in addition to the several States, only the District of Columbia.

(2) For purposes of this subsection, the term ``qualifying stage'', with respect to a communicable disease, means that such disease--

(A) is in a communicable stage; or

(B) is in a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals.

(e) Preemption

Nothing in this section or section 266 of this title, or the regulations promulgated under such sections, may be construed as superseding any provision under State law (including regulations and including provisions established by political subdivisions of States), except to the extent that such a provision conflicts with an exercise of Federal authority under this section or section 266 of this title.

(July 1, 1944, ch. 373, title III, Sec. 361, 58 Stat. 703; 1953 Reorg. Plan No. 1, Secs. 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86-624, Sec. 29(c), July 12, 1960, 74 Stat. 419; Pub. L. 94-317, title III, Sec. 301(b)(1), June 23, 1976, 90 Stat. 707; Pub. L. 107-188, title I, Sec. 142(a)(1), (2), (b)(1), (c), June 12, 2002, 116 Stat. 626, 627.)

#### Amendments

2002--Pub. L. 107-188, Sec. 142(a)(1), (2), (b)(1), and (c), which directed certain amendments to section 361 of the Public Health Act, was executed by making the amendments to this section, which is section 361 of the Public Health Service Act, to reflect the probable intent of Congress. See below.

Subsec. (b). Pub. L. 107-188, Sec. 142(a)(1), substituted ``Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General,'' for ``Executive orders of the President upon the recommendation of the National Advisory Health Council and the Surgeon General''.

Subsec. (d). Pub. L. 107-188, Sec. 142(a)(2), (b)(1), substituted in first sentence ``Regulations'' for ``On recommendation of the National Advisory Health Council, regulations'', ``in a qualifying stage'' for ``in a communicable stage'' in two places, designated existing text as

par. (1) and substituted ``A'' and ``B'' for ``(1)'' and ``(2)'', respectively, and added par. (2).

Subsec. (e). Pub. L. 107-188, Sec. 142(c), added subsec. (e).

1976--Subsec. (d). Pub. L. 94-317 inserted provision defining ``State'' to include, in addition to the several States, only the District of Columbia.

1960--Subsec. (c). Pub. L. 86-624 struck out reference to Territory of Hawaii.

#### Effective Date of 1960 Amendment

Amendment by Pub. L. 86-624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86-624, set out as a note under section 201 of this title.

#### Transfer of Functions

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

#### Executive Order No. 12452

Ex. Ord. No. 12452, Dec. 22, 1983, 48 F.R. 56927, which specified certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of such diseases, was revoked by Ex. Ord. No. 13295, Sec. 5, Apr. 4, 2003, 68 F.R. 17255, set out below.

Ex. Ord. No. 13295. Revised List of Quarantinable Communicable Diseases

Ex. Ord. No. 13295, Apr. 4, 2003, 68 F.R. 17255, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 361(b) of the Public Health Service Act (42 U.S.C. 264(b)), it is hereby ordered as follows:

Section 1. Based upon the recommendation of the Secretary of Health and Human Services (the ``Secretary''), in consultation with the Surgeon General, and for the purpose of specifying certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction,

transmission, or spread of suspected communicable diseases, the following communicable diseases are hereby specified pursuant to section 361(b) of the Public Health Service Act:

(a) Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; and Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named).

(b) Severe Acute Respiratory Syndrome (SARS), which is a disease associated with fever and signs and symptoms of pneumonia or other respiratory illness, is transmitted from person to person predominantly by the aerosolized or droplet route, and, if spread in the population, would have severe public health consequences.

Sec. 2. The Secretary, in the Secretary's discretion, shall determine whether a particular condition constitutes a communicable disease of the type specified in section 1 of this order.

Sec. 3. The functions of the President under sections 362 and 364(a) of the Public Health Service Act (42 U.S.C. 265 and 267(a)) are assigned to the Secretary.

Sec. 4. This order is not intended to, and does not, create any right or benefit enforceable at law or equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

Sec. 5. Executive Order 12452 of December 22, 1983, is hereby revoked.

George W. Bush.

