Marathon County Board of Health

Tuesday, September 8, 2020 at 7:45 AM **Meeting Location: 1000 Lake View Drive, Suite 100 Wausau, WI 54403**

The meeting site identified above will be open to the public. However, due to the COVID-19 pandemic and associated public health directives, Marathon County encourages Board of Health members and the public to attend this meeting remotely. To this end, instead of attendance in person, Board of Health members and the public may attend this meeting by telephone conference. If Board of Health members or members of the public cannot attend remotely, Marathon County requests that appropriate safety measures, including adequate social distancing, be utilized by all in-person attendees. Persons wishing to attend the meeting by phone may call into the telephone conference beginning five (5) minutes prior to the start time indicated above using the following number. When you enter the telephone conference, put your phone on mute.

Dial +1 312 626 6799 US (Chicago)
Meeting ID: 851 2896 1112
Password: 882227

Committee Members: John Robinson, Chair; Craig McEwen, Vice-Chair; Lori Shepherd, Secretary; Sandi Cihlar; Dean Danner; Kue Her; Tiffany Lee; Corrie Norrbom

Marathon County Mission Statement: Marathon County Government serves people by leading, coordinating, and providing county, regional, and statewide initiatives. It directly or in cooperation with other public and private partners provides services and creates opportunities that make Marathon County and the surrounding area a preferred place to live, work, visit, and do business. (Last updated: 12-20-05)

Marathon County Health Department Mission Statement: To advance a healthy Marathon County community by preventing disease, promoting health, and protecting the public from environmental hazards. (Last updated: 5-7-13)

1. Call to Order

2. Public Comment Period

3. Approval of the Minutes of the August 11, 2020 Board of Health Meeting

4. Operational Functions Required by Statute, Ordinance, or Resolution
- A. None

5. Policy Discussion and Possible Action
- A. Check in on the Board of Health Self-Assessment Plan of Work and identify opportunities to further strategies in light of available resources
- B. Update on public health program services in light of the department's response to COVID-19 pandemic
    - i. Community Health Priorities and Improvement Plan and support for Healthy Marathon County

ii. Temporary deployment of staff from COVID-19 response in light of case decline to further program services
iii. Marathon County Children's Hearing and Vision Program for the 2020-21 school year
iv. Plans to conduct WI Department of Health Services 140 Review
v. Other

C. Report from the Health & Human Services Committee September 2, 2020 meeting on policy issues impacting public health
i. Overview of Wisconsin Counties' Association Guidance in Implementing Regulations Surrounding Communicable Diseases: An Analysis of Local Health Department and Local Health Officer Powers, Duties, and Enforcement Actions
ii. Other

6. Educational Presentations/Outcome Monitoring Reports

A. Update on Marathon County's COVID-19 response efforts and focus for the next 30-60 days
B. Staffing Update

7. Announcements

8. Next Meeting Date & Time, Location, Future Agenda Items:

A. Confirm October 13, 2020 meeting date and determine agenda topics

9. Adjourn

FAXED TO: Daily Herald, City Pages, Marshfield News, Mid-West Radio Group

Date _____ Time_____

By _____

Signed_____

THIS NOTICE POSTED AT THE COURTHOUSE

Date_____ Time_____

Any person planning to attend this meeting who needs some type of special accommodation in order to participate should call the County Clerk's Office at 715-261-1500 or e-mail infomarathon@mail.co.marathon.wi.us one business day before the meeting.

MARATHON COUNTY BOARD OF HEALTH
Meeting Minutes
August 11, 2020

Present: Craig McEwen, Kue Her, John Robinson, Sandi Cihlar, Corrie Norrbom, Dean Danner,

MCHD Staff: Joan Theurer, Chris Weisgram, Jon Schmunk, Dale Grosskurth, Judy Burrows, Eileen Eckardt

Others Present:

1. Call to Order

John Robinson called the meeting to order at 7:45 a.m.

2. Public Comment Period

None

3. Approval of the Minutes of the July 14, 2020 Board of Health Meeting

Sandi Cihlar motioned to approve the July 14, 2020 minutes. Seconded by Kue Her. Motion approved.

4. Operational Functions Required by Statute, Ordinance, or Resolution

A. None

5. Policy Discussion and Possible Action

A. Revisit membership opportunities to serve on the Wisconsin Association of Local Health Departments and Boards (WALHDAB) and National Association of Boards of Health (NABOH)

Sandi Cihlar shared additional information since the last meeting, including that several opportunities are virtual. Members checked in regarding whether they have been receiving email notifications from the associations. Joan Theurer will follow up with those not yet receiving communication.

B. Overview of the 2021 budget parameters for county departments

Joan Theurer shared that at the July department head meeting, preliminary budget guidelines were shared. The request is for departments to include a 2.3% reduction in personnel costs. Some strategies to be used to address the reduction include not filling partial FTE positions that are open, and also looking at staff retirement plans and voluntary reductions in FTE.

Budgeting challenges include infusions of grant funds to support COVID-19 response for the current year. A loss in revenue has occurred in areas such as license renewals, and ability to draw grant and Medicaid funds will potentially remain reduced due to the pandemic response. Current unknowns include the Hearing & Vision Screening program.

John Robinson shared that there are several external factors that will affect how the County budget proceeds for next year.

C. Discuss the unmet and emerging public health needs in light of the department's response to COVID-19 pandemic

Joan Theurer provided a summary of the priority based program inventory, and noted the vast majority of Health Department programs have been impacted by the pandemic response.

Discussion on effect of reallocating resources and its potential effect on services such as Start Right, going into 2021.

Discussion on anticipated case load going forward, given the approaching reopening of schools for the fall, and the associated strain on systems as far as response, and testing. Ability to respond will depend on how school districts with plans for distancing and keeping students in their cohorts decrease the risk for transmission within schools.

Judy Burrows shared that the School Based Counseling Consortium has continued meeting and how to provide telehealth behavioral health services to students in an ongoing basis. Another area being addressed is how to support school staff. Sandi Cihlar shared that she has reached out to the WI Department of Agriculture regarding availability of health care funding and other services for farm families.

Corrie Norrbom shared that WIPPS recently completed surveying students on how they feel they are being impacted as a result of the pandemic.

Joan Theurer will share talking points with Board of Health members to use regarding the upcoming return to school for area students.

D. Report from the Health & Human Services Committee August 5, 2020 meeting on policy issues impacting public health
    i. Update on State funding to local health department to carry out pandemic related work
    ii. Provision of masks to guest at county buildings
    iii. Update on the work of the Wisconsin Counties' Association workgroup on County Communicable Disease Ordinance best practices

Joan Theurer shared updates from the recent Health & Human Services Committee of the County Board. Not all funds available through the State will be recouped because of the real cost of conducting contact tracing and investigations, as well as time for staff with expertise being unavailable to carry out some of the contract provisions.

Joan Theurer shared a summary of the current status in the development of best practices for County Communicable Disease Ordinances from the Wisconsin Counties Association.

Discussion on community education regarding the importance of an ordinance once the white paper from the Wisconsin Counties Association is completed.

Joan Theurer asked members to consider what entity that could provide assistance with public engagement, such as health care organization.

6. Educational Presentations/Outcome Monitoring Reports

A. Update on Marathon County's COVID-19 response efforts and focus for the next 30-90 days
   i. Health Department's role in supporting Wisconsin Emergency Order #1 relating to preventing the spread of COVID-19 by requiring face coverings in certain situations
   ii. Health Department response priorities in light of recent surge of COVID-19 cases in Marathon County

Joan Theurer shared that the recent issuing of Emergency Order #1 requiring face coverings in certain situations aimed to have individuals participate voluntarily. Education to residents is an important role of the Health Department, through sharing information, fielding questions from the public, and providing a complaint form for members of the community. The district attorney's office will lead in enforcement of the order, where necessary.

John Robinson shared there will likely be a need to provide an update to the County Board as an update at a future meeting.

Joan Theurer shared an update on how negative tests are currently handled by health care providers, and the role of the Health Department in processing negatives in the Wisconsin Electronic Disease Surveillance System. Concerns have been raised regarding the backlog of negative cases, and how numbers are reported to the public.

B. Staffing Update

Joan Theurer shared that Samantha Pinzl, Public Health Educator, will be leaving the Health Department at the end of October, after 5 years of service. Filling the open position will be moving forward, with the goal of hiring by the beginning of October.

7. Announcements

None

8. Next Meeting Date & Time, Location, Future Agenda Items:

A. Confirm September 8, 2020 meeting date and determine agenda topics
   i. Board of Health Self-Assessment Plan of Work

9. Adjourn

John Robinson adjourned the meeting at 9:22 a.m.

Respectfully submitted,

Lori Shepherd, Secretary
Chris Weisgram, Recorder

Health Officer Notes
September, 2020

Policy Discussion and Possible Action

A. Check in on the Board of Health Self-Assessment Plan of Work and identify opportunities to further strategies in light of available resources

Board members will review plan of work developed in 2019 and identify opportunities to further strategies outlined in the plan. Attached, find the Self-Assessment Plan of Work.

B. **Update on public health program services in light of the department's response to COVID-19 pandemic**

i. Community Health Priorities and Improvement Plan and support for Healthy Marathon County

Enclosed, find summary document provided to members of Healthy Marathon County. The points covered in the document was shared at the July Board of Health meeting.

ii. Temporary deployment of staff from COVID-19 response in light of case decline to further program services

Joan Theurer, Health Officer will share shifts occurring within the department given the decline in cases.

iii. Marathon County Children's Hearing and Vision Program for the 2020-21 school year

Joan Theurer, Health Officer and Judy Burrows, Program Director of Community Health Improvement will share plans for the program.

iv. Plans to conduct WI Department of Health Services 140 Review

Joan Theurer, Health Officer will share plans for the state to conduct a shortened 140 review in September. The 140 Review scheduled for mid-March was postponed due to COVID-19 response.

v. Other

C. Report from the Health & Human Services Committee September 2, 2020 meeting on policy issues impacting public health

i. Overview of Wisconsin Counties' Association Guidance in Implementing Regulations Surrounding Communicable Diseases: An Analysis of Local Health Department and Local Health Officer Powers, Duties, and Enforcement Actions

Enclosed find Wisconsin Counties' Association guidance document along with a one-page summary table that outlines Health Officer's authority and enforcement powers.

ii. Other

Educational Presentations/Outcome Monitoring Reports

A. Update on Marathon County's COVID-19 response efforts and focus for the next 30-60 days

Joan Theurer, Health Officer will do an overview of the department's response efforts for the next 30-60 days, fielding questions and concerns from Board of Health members.

B. Staffing Update

Hire:
Aaron Ruff is rejoining the department as of September 20, assuming the public health educator position being vacated by Sam Pinzl.

Resignation/Retirement:
Vicki Anthony, Hearing and Vision Screening Coordinator is resigning as of September 11, 2020 after 8 ½ years of service.

Pang Moua, Community Health Worker announced her retirement effective October 30, 2020. Pang has served the Health Department for 24 years.

Announcements

Next Meeting Date & Time, Location, Future Agenda Items:

A. Confirm October 13, 2020 meeting date and determine agenda topics

Marathon County Board of Health
Annual Self-Assessment Plan of Work
September 2, 2019 – July 7, 2020

Board Meeting Time

Action Step(s)	Who is Responsible	Timeframe	Status Update
1. Meeting time 7:45-9:15 AM a. Outlook appointment	1. Administrative Coordinator	1. September 15, 2019	9/3/2019 Completed
2. Continue to place policy agenda items prior to education	2. Health Officer	2. Ongoing	9/3/2019 Completed

Orientation of New Board Members and Board Development

Action Step(s)	Who is Responsible	Timeframe	Status Update
1. BOH Chair to be part of new board member orientation a. Cover BOH meeting etiquette (diverse views, method for sharing ideas & perspectives)	1. BOH Chair	1. As Needed	1/10/2020 Completed
2. Assign informal mentor a. Determine expectations & structure	2. BOH Chair	2. As Needed	
3. Develop a learning plan for new and existing Board members a. Identify key topics (e.g., Core Functions, Essential Services, PH 3.0)	3. Health Officer with input from BOH	3. December 1, 2019	
4. Explore the merits of having a half-day retreat during the first quarter of 2020 a. Identify critical advocacy gaps as part of the retreat	4. BOH	4. December 1, 2019	
5. Encourage members to attend United Way Board training	5. Health Officer & Board Mentor	5. As Needed	

Board Routinely Monitors Performance of the Health Department

Action Step(s)	Who is Responsible	Timeframe	Status Update
1. Develop calendar of topics (e.g., budget, strategic plan, annual report, CHIP report, county strategic plan,	1. Health Officer with input from BOH	1. December 1, 2019	

Health Officer Plan of Work, Annual Self-Assessment)			

Review Reporting Relationship with the Health & Human Services Committee and County Board

Action Step(s)	Who is Responsible	Timeframe	Status Update
1. Schedule meeting with County Board Chair, Health & Human Services Chair, Corporation County, County Administrator, Deputy County Administrator, Board of Health Chair, and Health Officer. Discussion on: a. Boundaries and process for advocacy (Fact Sheets, Letters, Resolutions) b. Reporting relationships	1. BOH Chair & Health Officer	1. By December 1, 2019	
2. Place WALHDAB/WPHA Public Affairs legislative items and State of WI DHS public health policy as a standing agenda item	2. Health Officer	2. October 1, 2019	2. Ongoing
3. Explore the merits of participating in quarterly Legislative Breakfast held at the Central WI Airport	3. BOH	3. By February 1, 2020	

Board of Health Adequately Reflects the Diversity Needed

Action Step(s)	Who is Responsible	Timeframe	Status Update
1. Ensure discussion on topics represent diverse views a. Invite guests as needed b. Post series of questions to assist BOH in keeping diversity in mind	1. BOH Chair & Health Officer	1. October 1, 2019	

Marathon County Community Health Priorities and Improvement Plan 2017-2020
2020-2021 Focus in Light of COVID-19 Pandemic Response - August 18, 2020

Background

Marathon County Health Department has served in a leadership facilitation role in coordinating efforts among partners in addressing community health priorities. In light of COVID-19 pandemic response, furthering community health priority goals has been challenging due to:

- Marathon County Health Department Community Health Improvement Team staff being redirected to support the department's response efforts,
- Community agencies and partners resources being impacted as a result of COVID-19, and
- Community partners' ability to engage in meaningful dialogue that creates community synergy altered, having agencies explore alternatives to traditional in-person meetings.

In the late winter of 2020, a process was underway with the Marathon County Board of Health and representatives from Healthy Marathon County to identify community health priorities for 2021-2024. The process was stopped in light of agency and community resources being redirected to respond to COVID-19 pandemic. To date, no further action has been taken to identify community health priorities for 2021-2024 and develop a community health improvement plan.

Recommendations for the Fall-Winter 2020-2021

The Marathon County Health Department has assess the status of the current seven health priorities in addition to the overarching health priority, social and economic factors that influence health. The assessment looked at the level of engagement by the community, current results and strategies, and staff availability to serve in leadership facilitation role. In addition, available staff resources to support community health improvement efforts was assessed. Based on this assessment, Marathon County Health Department will;

1. Wait until the spring of 2021 to identify community health priorities and develop community health improvement plan, allowing for re-evaluation of readiness to move forward based on COVID-19 response efforts.
2. Dedicate limited Marathon County Health Department staff to facilitate community action for the health priorities:
    a. AODA, including tobacco
    b. Behavioral Health
    c. ACE awareness and prevention, in relationship to AODA, tobacco, and mental health
3. Monitor health priorities and facilitate connections as able for the health priorities:
    a. Healthy Weight
    b. Health Needs of Aging
    c. Oral Health
4. Continue to have Health Marathon County focus efforts to further health equity goals of the LIFE Report in relationship to overarching health priority, 'social and economic factors that influence health'; community health priority goals as outlined above; while paying attention to the impact of COVID-19 in achieving goals.
5. Continue to provide staff support in terms of agenda, minutes, and email correspondences.
6. Continue to monitor Healthy Marathon County members' availability to support and carry out the mission of the organization, adjusting meeting frequency as needed.

These recommendations are not meant to limit partnership opportunities that occur outside Healthy Marathon County. Alliance members are encouraged to continue to seize initiatives as well as share community initiatives with Healthy Marathon County that support health priorities.

Summary of Health Officer's Communicable Disease Authority and Enforcement Actions

Category	Health Officer Authority	Enforcement
Individual Isolation and Quarantine of persons due to test results positive for COVID-19	Provide written voluntary agreement outlining expectations (e.g., stay home, limit visitors) and education	N/A
	If the voluntary agreement is not followed, issue Health Officer order outlining required actions	Employ quarantine guards to monitor compliance with Health Officer order
	Violation of a Health Officer order	Petition the court to order confinement and other actions necessary or Carry out enforcement as outlined in the Public Health Ordinance (optional)
Outbreak **(Limited Area or single Organization)**	Provide education and recommendations for actions to be taken (e.g., cleaning, exclusion of employees, temporary shutdown) in writing	N/A
	If action not taken voluntarily, issue an Health Officer order outlining specific actions	Employ Health Department staff to monitor compliance with Order
	Violation of a Health Office order	Petition the court to order actions necessary or Carry out enforcement as outlined in the Public Health Ordinance (optional)
General **(Broad Area or County-wide)**	Provide education and recommendations for actions to be taken (e.g., masking, travel restrictions, public gatherings)	N/A
	Issue an Advisory for actions to be taken	N/A
	Issue a Health Officer order outlining specific actions	Employ Health Department staff to monitor compliance with Health Office order
	Violation of a Health Officer order	Carry out enforcement as outlined in the Public Health Ordinance (only means of enforcement

Source: Wisconsin Counties Association. Guidance in Implementing Regulations Surrounding Communicable Disease: An Analysis of Local Health Department and Local Health Officer Powers, Duties, and Enforcement Actions. August 14, 2020

WISCONSIN COUNTIES ASSOCIATION

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MADISON, WI 53703
TOLL FREE: 1.866.404.2700
PHONE: 608.663.7188
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www.wicounties.org

MEMORANDUM

TO: Wisconsin County Officials

FROM: Mark D. O'Connell, Executive Director

DATE: August 14, 2020

SUBJECT: Guidance in Implementing Regulations Surrounding Communicable Disease

I am pleased to present to you *Guidance in Implementing Regulations Surrounding Communicable Diseases: An Analysis of Local Health Department and Local Health Officer Powers, Duties, and Enforcement Actions*.

This product is the compilation of many weeks of work by an ad hoc committee tasked with creating a body of knowledge that provides guidance to local governments on how to provide a meaningful regulatory system to combat the spread of a communicable disease at the local level. Although the work of this committee was triggered by our current public health pandemic, this guidance is intended to address other situations and issues related to the regulation of communicable diseases, whether local, regional, or global in nature.

The work of this committee was guided by four principles:

1. How do we best protect the public's health?
2. How can a local government regulatory process be practically implemented?
3. How will a local government provide an enforcement mechanism?
4. How can we create public awareness, understanding, and support for health and safety in the context of the regulatory process?

This Guidance is intended to provide just as its name suggests – guidance. It will hopefully provide local governments with a substantive and procedural foundation as they consider whether or how best to update or craft ordinances relating to regulations surrounding the response to communicable diseases. The Guidance is not a template and is not a model. The Guidance is also not intended as legal advice – counties need to work with their corporation counsel in creating their own ordinances and policies.

To assist in understanding the document, two webinars have been scheduled to walk through each section of the Guidance.

The first is Monday, August 17, 2020 at 9:00 a.m. and the second is Wednesday, August 19, 2020 at 11:00 a.m. Pre-registration is not required. *Please note that each webinar will cover the same content.*

MONDAY, AUGUST 17, 2020
9:00 A.M. (CST)

VIA ZOOM
Please click the link below to join the webinar:
https://us02web.zoom.us/j/83473368766
Passcode: 463125

OR JOIN VIA CONFERENCE LINE
US: +1 312 626 6799
Webinar ID: 834 7336 8766
Password: 463125

OR

WEDNESDAY, AUGUST 19, 2020
11:00 A.M. (CST)

VIA ZOOM
Please click the link below to join the webinar:
https://us02web.zoom.us/j/83195033621
Passcode: 332826

OR JOIN VIA CONFERENCE LINE
US: +1 312 626 6799
Webinar ID: 831 9503 3621
Password: 332826

Speakers
Webinar speakers include Sarah Diedrick-Kasdorf, Wisconsin Counties Association; Andy Phillips, von Briesen & Roper, s.c.; and Eric Ostermann, Wisconsin Association of Local Health Departments and Boards.

This Guidance could not have been created without the assistance of several individuals and organizations who spent countless hours meeting, drafting, and reviewing numerous versions of the Guidance. My colleague, Sarah Diedrick-Kasdorf, did a commendable job of chairing the group and facilitating deep and meaningful discussion on sensitive matters in arriving at the body of knowledge. A special thank you to the following individuals and organizations who participated in the process and assisted in producing this document:

Wisconsin Association of Local Health Departments and Boards
Linda Conlon, Oneida County Health Officer

Annette Seibold, Florence County Health Officer
Darren Rausch, City of Greenfield Health Officer
Lieske Giese, Eau Claire City-County Health Officer
Joan Theurer, Marathon County Health Officer
Eric Ostermann, Executive Director

League of Wisconsin Municipalities
Claire Silverman, Legal Counsel
Stephen Nick, Eau Claire City Attorney's Office

Wisconsin Association of County Corporation Counsel
Nicholas Lange, Dunn County Corporation Counsel
Kim Nass, Dodge County Corporation Counsel

Wisconsin Restaurant Association
Kristine Hillmer, President and CEO
Susan Quam, Executive Vice President

Wisconsin Counties Association
Steve O'Malley, La Crosse County Administrator
Paul Susienka, Bayfield County Sheriff
Andy Phillips, General Counsel, von Briesen & Roper S.C.
Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs

Fox Cities Chamber of Commerce
Jayme Sellen, Vice President of Economic Development and Government Affairs

If you have any questions about the guidance, please do not hesitate to contact the Wisconsin Counties Association.

GUIDANCE IN IMPLEMENTING REGULATIONS SURROUNDING COMMUNICABLE DISEASES

An Analysis of Local Health Department and Local Health Officer Powers, Duties, and Enforcement Actions.

Wisconsin Counties Association

www.wicounties.org

WCA WISCONSIN COUNTIES ASSOCIATION

von Briesen

von Briesen & Roper, s.c. | Attorneys at Law

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INTRODUCTION

The COVID-19 pandemic fundamentally altered society's operations and forced state and local governments across the country to take swift and meaningful action to stop the spread of the virus. In Wisconsin, the Governor declared a public health emergency for the entire state on March 12, 2020. The Governor's declaration triggered statutes that granted broad powers to the Department of Health Services (DHS) to control the pandemic. Over the course of the ensuing weeks, DHS issued a series of "Safer at Home" Orders[1] that placed various restrictions on Wisconsin businesses and residents, as well as providing an enforcement mechanism for the Orders.

In April 2020, the Wisconsin Legislature filed a petition for an original action in the Wisconsin Supreme Court challenging Emergency Order #28, the second Safer at Home Order. Importantly, Emergency Order #28 was issued entirely under the authority of the Secretary of DHS under Wis. Stat. ch. 252 and without use of the Governor's emergency powers. On May 13, 2020, the Wisconsin Supreme Court declared that DHS exceeded the scope of its powers in issuing Emergency Order #28 and declared Emergency Order # 28 invalid, except as it related to school closures for the balance of the 2019-2020 academic year.[2] Almost immediately following the Court's decision, it became clear that the Governor's Administration and the Legislature would be unable to reach consensus on a statewide plan for combatting the pandemic.

As a result of the Supreme Court's decision in *Legislature v. Palm*, and the resulting lack of a statewide order or regulation, local health officers and local governments instantly became the primary source of regulatory authority in relation to measures designed to abate the spread of the pandemic. Local health officers and health departments spent considerable time discussing how to craft orders to combat the pandemic and, as well, how to work with their governing bodies and counsel to ensure that the orders were meaningful and, in some circumstances, enforceable.

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[1] This reference to "Orders" includes Emergency Order #28 (Safer at Home) (https://evers.wi.gov/Documents/COVID19/EMO28-SaferAtHome.pdf), Emergency Order #31 (Badger Bounce Back) (https://evers.wi.gov/Documents/COVID19/EMO31-BadgerBounceBack.pdf), Emergency Order #34 (Interim Order to Turn the Dial) (https://evers.wi.gov/Documents/COVID19/EMO34-SAHDialTurn.pdf), and Emergency Order #36 (Interim Order to Turn the Dial) (https://evers.wi.gov/Documents/COVID19/EMO36-SAHDialTurn2.pdf). Although only Emergency Order #28 was challenged in *Palm*, all of these orders emanated from the same authority and, as a result, the Court's invalidation of Emergency Order #28 invalidated the other three orders as well.

[2] See *Wisconsin Legislature v. Palm*, 2020 WI 42.

It soon became clear that local governments in Wisconsin were faced with a very difficult task given that health regulations designed to curb the spread of a communicable disease that had reached the status of a global pandemic had never before been left to local government. For this reason, the Wisconsin Counties Association created an ad hoc committee to review current policy and law and provide guidance to counties and municipalities with local health departments on issues surrounding communicable disease. The committee was comprised of representatives from county government, the Wisconsin Association of Local Health Departments and Boards, county corporation counsel offices, the League of Wisconsin Municipalities, the City of Eau Claire City Attorney's Office, the Wisconsin Restaurant Association, and a local chamber of commerce.

Over the course of six weeks, the committee prepared this *Guidance in Implementing Regulations Surrounding Communicable Disease* to assist local governments in determining how to provide a meaningful regulatory system to combat the spread of a communicable disease at the local level. The committee's work was guided by four principles:

1. How do we best protect the public's health?
2. How can a local government regulatory process be practically implemented?
3. How will a local government provide an enforcement mechanism?
4. How can we create public awareness, understanding, and support for health and safety in the context of the regulatory process?

It is important to understand that this Guidance, while helpful in the current circumstance, is not designed solely for the issues surrounding COVID-19. Instead, it is intended as a workable overview for local governments in regulating matters in relation to any communicable disease.

We hope you find the Guidance to be a useful tool in determining how it is your local government will respond to the current and any future circumstance involving a communicable disease. *This Guidance is not intended as legal advice and should not be cited as legal authority – it is critical that local governments work with their own counsel in adopting or amending regulations of this nature*. If you have any questions about the Guidance, please do not hesitate to contact the Wisconsin Counties Association.

SUMMARY OF GUIDANCE

At the outset, it is important for the reader to understand what this Guidance is intended to provide and, of equal importance, what it does not provide. This Guidance is intended to provide just as its name suggests – guidance. It will hopefully provide local governments with a substantive and procedural foundation as they consider whether or how best to update or craft ordinances relating to regulations surrounding the response to communicable diseases.[3] There are many different statutes that authorize counties, cities, and villages to regulate matters relating to public health, safety, and welfare including, without limitation, Wis. Stats. chs. 59, 61, 62, 66, and 323. This Guidance is not intended to suggest that some or all of those statutes are inapplicable in any given situation. As noted throughout this Guidance, local governments should consult with their counsel in determining the appropriate means of exercising regulatory authority.

Importantly, the Guidance is not a template and is not a model. There should be no "cut and paste" feature where a local government is able to simply adopt the Guidance as its own body of regulation. With this background, the following is a summary of the Guidance's contents.

In addition to providing an overview and history of public health's role in matters surrounding communicable disease, the Guidance focuses on the statutory powers of a local health officer, as impacted by the legal precedent construing those powers, and the options for enforcement of health orders and ordinances relating to communicable disease.

A local health officer's duties and authority to address situations involving the presence of a communicable disease in a particular individual or group of persons are relatively clearly defined by statute and further discussed at length in the applicable administrative code provisions. In such circumstances, both the statutes and administrative code provide guidance on what a local health officer must do and, as well, provide options to the local health officer in terms of what may be ordered. When it comes to enforcing a local health officer's orders directed toward an individual or specific persons, the administrative code provides a specific legal remedy – the local health officer may petition a court seeking an order to enforce. In such a circumstance, the court is provided the opportunity to grant or deny the petition, which will

[3] The Committee is aware that certain Wisconsin local governments have adopted ordinances citing general or emergency (Wis. Stat. ch. 323) authority. Regulating under those authorities is beyond the scope of this Guidance, which is specific to regulations surrounding communicable diseases as set forth in Wis. Stats. ch. 252.

then define precisely how an individual or group of persons will be ordered to conduct themselves and their affairs.

By contrast, a local health officer's authority to issue orders applicable to the public at large (*e.g.*, a local "safer at home" order) is not as precisely defined in statute and such orders are not addressed in the administrative code. The challenges in defining the scope of authority are exacerbated given the Supreme Court's discussion in *Legislature v. Palm* surrounding the scope of the DHS Secretary's authority under a statute similar to the statute granting a local health officer the authority to issue orders. In summary, and as explained in detail below, a local health officer has broad statutory authority to take action to prevent or suppress the spread of a communicable disease, but such authority must be exercised in a manner that is "reasonable" and "necessary" and, moreover, must be based upon the conditions currently prevailing in the local health officer's territory. As a result, a local health officer may issue orders applicable to the public at large, but such orders must have a nexus to what is reasonable and necessary under local conditions.

In matters involving the enforcement of orders applicable to the public at large, unlike the administrative code's petition process for orders applicable to a specific individual or group of persons, there is no statutory or administrative code enforcement mechanism. Instead, pursuant to Wis. Stat. § 252.25, if a local government wants to impose a penalty for violation of such orders, the local government must have an ordinance authorizing the imposition of the penalty. As set forth in detail below, legal requirements surrounding specificity in ordinances and the concepts surrounding the unlawful delegation of legislative authority make the task of crafting such an ordinance difficult. In the end, local governments need to carefully balance the need to provide a swift and effective reaction to the presence of a communicable disease with constitutional and common law considerations limiting a legislative body's power to delegate the authority to adopt a law (ordinance) that will make a member of the public subject to a penalty for noncompliance.

TERMINOLOGY & DEFINITIONS

The Spring of 2020 expanded our collective vocabulary in ways that we could not envision. Terms like "social distancing" and "flatten the curve" were rarely used prior to the onset of the pandemic. In addition to these common phrases, there is also terminology utilized by local health officers and health departments that are important to define in order to better understand issues surrounding communicable disease.

Occasionally, the amount of disease in a community rises above the level to be expected in normal circumstances. The term *Epidemic* refers to an increase, often sudden, in the number of cases of a disease above what is normally expected in that population in that area. The term *Outbreak* carries the same definition of epidemic, but is most often used for a more limited geographic area. The term *Cluster* refers to an aggregation of cases grouped in place and time that are suspected to be greater than the number expected, even though the expected number may not be known. The term *Pandemic* refers to an epidemic that has spread over several countries or continents, usually affecting a large number of people.[4]

Johns Hopkins Bloomberg School of Public Health describes *Risk Assessment* as a process used to evaluate the risks and hazards of decisions made during response to an outbreak. An assessment of policy decisions considers both the likelihood of increased transmission and the consequences of that transmission. Risk of increased transmission is balanced against the risks to the public, society and the economy from measures taken to reduce spread of disease.[5] Local health officers routinely engage in risk assessments in determining the appropriate public health response to the identification of a communicable disease within their jurisdiction.

Isolation means the separation of a person or group of people known or reasonably believed to be infected with a communicable disease, and potentially infectious, from those who are not infected in order to prevent spread of the communicable disease. *Quarantine* means the separation of a person or group of people reasonably believed to have been exposed to a communicable disease, but not yet symptomatic, from others who have not been so exposed to prevent the possible spread of the communicable disease.[6] As set forth below, state statute and the administrative code discuss how isolation and quarantine measures may be invoked and enforced.

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[4] https://www.cdc.gov/csels/dsepd/ss1978/lesson1/section11.html.
[5] https://www.centerforhealthsecurity.org/our-work/pubs_archive/pubs-pdfs/2020/200417-reopening-guidance-governors.pdf, pp 10-19.
[6] *See* https://www.dhs.wisconsin.gov/dph/memos/communicable-diseases/2020-08.pdf.

HISTORY OF COMMUNICABLE DISEASE REGULATION

Though 115 years old, *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), remains the key U.S. Supreme Court case articulating how and why governmental entities may curtail civil liberties while trying to safeguard the public's welfare during a public health crisis. The case has been cited repeatedly by courts across the country in evaluating the constitutionality of COVID-19-related restrictions on civil liberties, particularly mass gatherings.

In *Jacobson,* Henning Jacobson, the Plaintiff, refused to receive a smallpox vaccination in defiance of a Cambridge, Massachusetts public health regulation that was adopted to stem an outbreak of the disease. A jury found him guilty of willfully violating the regulation; accordingly, the court ordered him to pay the five-dollar penalty for its violation. Jacobson appealed, arguing that the regulation was "opposed to the spirit of the Constitution." In particular, he argued that it violated the 14th Amendment, claiming that the amendment provides: "… No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law…."

In a 7-2 ruling, the Supreme Court affirmed Jacobson's guilty verdict and penalty. In doing so, the Supreme Court concluded that governmental restrictions of individual liberties were certainly appropriate to protect the greater public welfare in the face of a health crisis, such as a smallpox outbreak.

> There is, of course, a sphere within which the individual may assert the supremacy of his own will, and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.[7]

[7] *Id.* at 29.

The Court analogized the situation—not unlike the situation we see today—to a long-distance traveler who was exposed to a disease (but remains asymptomatic) and why such individuals may need to be quarantined against their will, despite their inherent right "to live and work where he will."[8]

> An American citizen arriving at an American port on a vessel in which, during the voyage, there had been cases of yellow fever or Asiatic cholera, he, although apparently free from disease himself, may yet, in some circumstances, be held in quarantine against his will on board of such vessel or in a quarantine station, until it be ascertained by inspection, conducted with due diligence, that the danger of the spread of the disease among the community at large has disappeared. The liberty secured by the 14th Amendment, this court has said, consists, in part, in the right of a person "to live and work where he will" . . . and yet he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country[.][9]

The Court's rationale in *Jacobson* has provided the foundation for the cases, statutes, and regulations that many states across the country have decided or adopted over the past century. As discussed in Killoran & Wittenberg, *Due Process in the Time of Coronavirus,* WISCONSIN LAWYER, April 2020, courts have generally recognized a state or local government's right to impose restrictions on individual liberties in an effort to protect public health.[10] Indeed, as a general rule, balancing individual liberties with an overall strong interest in preserving the public's health results in circumstances where individuals will be compelled to perform certain acts or refrain from certain activities that may not otherwise be considered a lawful or constitutional imposition absent the compelling need for the state or local government to take swift action to prevent the spread of a communicable disease. In fact, as recently as 2007, the Wisconsin Supreme Court upheld the City of Milwaukee Health Department's imposition of an isolation order when an individual failed to follow protocol in relation to tuberculosis treatment.[11]

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[8] *Id.*
[9] *Id.*
[10] Citing *Compagnie Francaise de Navigation a Vapeur v. Louisiana Bd. of Health*, 186 U.S. 380 (1902); *Kirk v. Wyman*, 65 S.E. 387 (S.C. 1909); *Illinois ex rel. Barmore v. Robertson*, 134 N.E. 815 (Ill. 1922); *Moore v. Draper*, 57 So. 2d 648 (Fla. 1952); *United States ex rel. Siegel v. Shinnick*, 219 F. Supp. 789 (S.D.N.Y. 1963).
[11] See *Milwaukee v. Washington*, 2006 WI App 99.

As discussed in greater detail below, these fundamental legal principles are illustrated in the broad powers granted to state and local health officials in statute and regulation in relation to activities surrounding communicable disease. Nonetheless, the applicable statutes and regulations have been the subject of recent litigation, which gives rise to a need for a deliberative approach to defining the scope of local government regulatory authority in this regard.

WISCONSIN STATUTES ON COMMUNICABLE DISEASE

Wisconsin statutes relating to public health date back to 1887 with the creation of the first State Board of Health. More recently, in 1981, the Legislature enacted Assembly Bill 711, signed into law by Governor Dreyfus, which substantially overhauled the statutes relating to the control of communicable disease (then Wis. Stat. ch. 143). The changes to then Wis. Stat. § 143.03 (Duties of Local Health Officers) consisted of updates to terminology, and, importantly, the shift of some duties away from local boards of health to local health officers. Local health officers were also granted somewhat greater autonomy from DHS (outside of a "public health emergency" declared by the governor) and were instead required to report findings and progress to DHS. Chapter 143 was renumbered to Wis. Stat. ch. 252 in 1993, but was not significantly amended at that time. While some incremental updates have subsequently been made to sections of Wis. Stat. ch. 252, Wis. Stat. § 252.03 (Duties of Local Health Officers) has existed in its current form since the revisions in 1981.

OVERVIEW OF LOCAL HEALTH OFFICER LEGAL AUTHORITY

RELATING TO PREVENTING THE SPREAD OF COMMUNICABLE DISEASE

Local health officers[12] are vested with certain powers to curtail the spread of communicable disease, in addition to their ongoing duties and responsibilities for managing their respective local health department. The primary responsibilities and related powers reviewed for purposes of this Guidance may be logically divided into four categories: (1) investigation and reporting; (2) isolation or quarantine orders that apply to a specific individual; (3) orders that apply to a specific person, group of persons or gathering spot, including a business, that are deemed necessary to immediately control the potential spread of a communicable disease (sometimes referred to as "outbreak" orders or designations); and (4) general orders that impact the public at large. Current law addresses each of these categories differently in terms of the recognized scope of a local health officer's powers.

INVESTIGATION & REPORTING

As an initial matter, Wis. Stat. § 252.03(1) requires a local health officer to "immediately investigate all the circumstances" when a communicable disease appears in his or her territory. Once the investigation is complete, the statute requires the local health officer to "make a full report to the appropriate governing body and also to the [Department of Health Services]." This initial investigation and reporting step is important for purposes of reinforcing the scope of a local health officer and local government's regulatory authority because the powers exercised under Wis. Stat. ch. 252, and related regulations, require the powers to be exercised in a "reasonable" fashion and only upon a determination that the exercise of such powers is "necessary." These concepts are discussed in greater detail in the sections that follow relating to the scope of authority and enforcement mechanisms.

Important to the concepts surrounding the investigation and report function, local health officers may also obtain a special inspection warrant in situations where a person or business refuses to comply with the local health officer's required investigation. Local health officers may "apply for, obtain and execute a special inspection warrant" pursuant to Wis. Stat. § 66.0119 upon a

[12] A "local health officer" means the person appointed to oversee and administer a local health department under Wis. Stat. § 251.06.

showing that consent for entry into a building for "inspection purposes"[13] has been refused. Upon such a showing, "special inspection warrants shall be issued for inspection of personal or real properties which are not public buildings or for inspection of portions of public buildings which are not open to the public."[14] A special inspection warrant is not required for cases of emergency.[15]

Because the investigation and report serve as the foundational document giving rise to "reasonable" and "necessary" regulations, careful attention should be paid to not only extrinsic medical and scientific resources describing a communicable disease, but also to local conditions that have or may impact the transmission and spread of the disease.

ISOLATION & QUARANTINE

The next category of local health officer authority with respect to communicable disease transmission involves isolation and quarantine orders. Of the four categories of local health officer authority related to communicable disease suppression, the isolation and quarantine process is the best defined by statute.

A local health officer's obligation to investigate and ability to isolate or quarantine an individual(s) because of a communicable disease is set forth in Wis. Stat. § 252.06(1):

> If a local health officer suspects or is informed of the existence of any communicable disease, the officer shall at once investigate and make or cause such examinations to be made as are necessary. The diagnostic report of a physician, the notification or confirmatory report of a parent or caretaker of the patient, or a reasonable belief in the existence of a communicable disease shall require the local health officer immediately to quarantine, isolate, require restrictions or take other communicable disease control measures in the manner, upon the persons and for the time specified in rules promulgated by the department. If the local health officer is not a physician, he or she shall consult a physician as speedily as possible where there is reasonable doubt or disagreement in diagnosis and where advice is needed. The local health officer

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[13] "Inspection purposes" includes such purposes as building, housing, electrical, plumbing, heating, gas, fire, health, safety, environmental pollution, water quality, waterways, use of water, food, zoning, property assessment, meter and obtaining data required to be submitted in an initial site report or feasibility report under subch. III of ch. 289 or s. 291.23, 291.25, 291.29 or 291.31 or an environmental impact statement related to one of those reports. "Inspection purposes" also includes purposes for obtaining information specified in s. 196.02 (5m) by or on behalf of the public service commission. Wis. Stat. § 66.0119(1)(a).
[14] Wis. Stat. § 66.0119(2).
[15] *Id.*

> shall investigate evasion of the laws and rules concerning communicable disease and shall act to protect the public.

Once these steps are completed and a communicable disease threat is identified, a local health officer must "immediately" quarantine, isolate, or take other measures to control the spread of the communicable disease "in the manner, upon the persons and for the time specified in rules promulgated by [DHS]."[16] As set forth below, Wis. Admin Code § DHS 145.06 specifies what action a local health officer may take in this regard.

The definitions of "quarantine" and "isolation" impact a local health officer's decision on the measures ordered to control the spread of the communicable disease. Wisconsin Statutes and Wisconsin Administrative Code do not specifically define "quarantine" and "isolation" in reference to communicable disease outbreaks. While the terms are seemingly used interchangeably in statute, guidance from DHS makes key distinctions that impact a local health officer's obligations.

Both isolation and quarantine involve separation of a person or group of people from others in order to control the spread of the communicable disease. The key difference lies in whether the person or group of people has been exposed or actually infected: (a) "isolation" targets those who have been *infected,* or are reasonably believed to have been infected with a communicable disease; and (b) "quarantine" targets those who have been *exposed,* or reasonably believed to have been exposed, but do not show symptoms. As such, and by way of example, a local health officer may order "isolation" for those with confirmed cases of COVID-19 and those exposed and believed to have been infected with COVID-19 (*i.e.*, those who show symptoms). Isolation occurs in confirmed cases of COVID-19 and involves far more oversight of those isolated. Alternatively, a local health officer may order "quarantine" for those exposed to COVID-19 or who are believed to have been exposed to COVID-19 but do not show symptoms.

A local health officer also has the discretion to prohibit all people except the local health officer or his/her representatives, attending physicians and nurses, members of the clergy, the members of the person's immediate family, and other people possessing a "special written permit from the local health officer" from contact with an isolated or quarantined person.[17]

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[16] Wis. Stat. § 252.06(3).
[17] Wis. Stat. § 252.06(4)(a).

Except for these expressly permitted individuals, all other people "are forbidden to be in direct contact with the patient" that the local health officer orders to be in isolation or quarantine.[18]

DHS and its agents' authority to isolate and quarantine are expanded if the governor has declared a state of emergency related to public health and designates DHS as the state's public health authority pursuant to Wis. Stat. §250.042(1).[19] A local health department is an "agent" of DHS only when expressly designated by the DHS Secretary. It is important to note that this expanded authority is only applicable during an emergency declared by the governor and is not applicable during an emergency declared by a local unit of government. These restrictions include that no person, other than those authorized by the local health officer, may enter an isolation or quarantine premises. If such unauthorized entry occurs, a person violating this restriction is subject to a fine not to exceed $10,000 or imprisonment not to exceed nine months, or both.[20] In addition, any person accessing the isolation or quarantined premises may be subject to isolation or quarantine within the discretion of the local health officer.[21]

"OUTBREAK" ORDERS

Local health officers also have authority to issue orders applicable to a specific person, group of persons or gathering spot, including a business, that are deemed reasonable and necessary to immediately control the spread or potential spread of a communicable disease. These orders are sometimes referred to as orders dealing with an "outbreak" situation and, while somewhat different than an isolation or quarantine order specific to an individual, are treated substantially similar to an isolation or quarantine order.

Upon the appearance of a communicable disease within a local health officer's jurisdiction, a local health officer must immediately investigate all the circumstances and make a full report to the applicable governing body and also to DHS.[22] The local health officer must also "promptly take all measures necessary to prevent, suppress and control communicable diseases," and is further tasked with reporting to the appropriate governing body the progress of the communicable diseases and the measures used against them, as needed to keep the appropriate governing body fully informed, or at such intervals as the secretary of DHS may direct.[23] Additionally, the local health officer may inspect schools and other public buildings

[18] *Id.*
[19] Wis. Stat. § 252.06(4)(b).
[20] Wis. Stat. § 252.06(4)(b)2.
[21] Wis. Stat. § 252.06(4)(b)3.
[22] Wis. Stat. § 252.03(1).
[23] *Id.*

within his or her jurisdiction as needed to determine whether the buildings are kept in a sanitary condition.[24] Finally, local health officers "may do whatever is reasonable and necessary for the prevention and suppression of disease, may forbid public gatherings when deemed necessary to control outbreaks or epidemics and shall advise the [DHS] of measures taken."[25]

While Wis. Stat. § 252.03 grants local health officers broad authority with respect to stopping the transmission of communicable diseases, a local health officer's authority is based on local conditions (determined as part of the local health officer's statutorily required investigation and report to the governing body), as well as principles of reasonableness and necessity. Importantly, what is "reasonable and necessary" in this context, and in the light of local conditions, is not defined in statute. However, what is "reasonable and necessary" is informed by the explicit authority granted to local health officers. As indicated above, there is relatively significant guidance in the statutes and administrative code surrounding what enforcement actions are authorized in situations involving isolation and quarantine. Moreover, local health officers are provided explicit authority, within the context of reasonableness and necessity, to forbid public gatherings as a means to combat the spread of a communicable disease. In addition, to the extent specific findings of reasonableness and necessity surrounding an order applicable to a specific group of individuals or a business and based on local conditions are documented in terms of a potential outbreak of a communicable disease, it is likely that such an order would also be deemed to fall within a local health officer's authority.

Local health officer authority related to specific orders is further supported by Wis. Admin Code § DHS 145.06. DHS 145.06 provides specific guidance as to what actions local health officers may take when a person is known to have or is suspected of having a contagious medical disease. This includes the authority to direct a person to comply with any of the following (singly or in combination), as appropriate:

(a) Participate in a designated program of education or counseling.
(b) Participate in a defined program of treatment for the known or suspected condition.
(c) Undergo examination and tests necessary to identify a disease, monitor its status or evaluate the effects of treatment on it.
(d) Notify or appear before designated health officials for verification of status, testing or direct observation of treatment.

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[24] *Id.*
[25] Wis. Stat. § 252.03(2).

(e) Cease and desist in conduct or employment which constitutes a threat to others.

(f) Reside part-time or full-time in an isolated or segregated setting which decreases the danger of transmission of the communicable disease.

(g) Be placed in an appropriate institutional treatment facility until the person has become noninfectious.[26]

In addition, Wis. Admin Code § DHS 145.06(6) explicitly provides that a local health officer "may direct persons who own or supervise real or physical property or animals and their environs, which present a threat of transmission of any communicable disease under sub. (1), to do what is reasonable and necessary to abate the threat of transmission. Persons failing or refusing to comply with a directive shall come under the provisions of sub. (5) and this subsection." The petition process for enforcement of an order dealing with a potential "outbreak," according to Wis. Admin Code § DHS 145.06(5), is discussed below.

Orders directed at specific individuals, groups, or businesses also do not appear to implicate the same concerns identified in the Supreme Court's conclusions in *Wisconsin Legislature v. Palm*. In general terms, the Wis. Stat. ch. 252 issues arising from the *Wisconsin Legislature v. Palm* case relate primarily, if not exclusively, to orders applicable to the public at large issued under Wis. Stat. § 252.02. While Wis. Stat. § 252.02 relates specifically to DHS, the Court's conclusions may also indirectly affect local health officer authority under Wis. Stat. § 252.03 because of the similar and/or concurrent authority granted to local health officers and DHS. Again, though, these issues arise primarily in relation to orders issued to the public at large and the enforcement of such orders without legislative or elected official oversight. Because these issues are not present with specific orders applicable to specific individuals, and due to the clear statutory and administrative rule authority to enforce such individual orders, *Palm* does not appear to affect a local health officer's authority in this area.

GENERAL ORDERS

The final category of local health officer authority discussed in this Guidance relates to general orders that impact the public at large. This category is the least defined under statute and administrative code, and little authority or guidance exists to aid in statutory interpretation of these powers.

[26] Wis. Admin Code § DHS 145.06(4).

All local health orders are subject to the requirement that they be reasonable and necessary based on local conditions, as discussed above.[27] It is important that the foundation for the determination that an order is reasonable and necessary based upon local conditions be identified in the order itself. In many circumstances, health orders contain lengthy recitals contained within "Whereas" clauses – it is typical for these recitals to contain the factual justification for the local health officer's decision to issue the health order.

In terms of the actual conduct that is either prohibited or encouraged in the body of a health order, Wis. Stat. § 252.03 expressly provides local health officers with the explicit authority to forbid public gatherings when necessary and, in addition, the power to order other reasonable and necessary measures to prevent and suppress a disease. Any restriction ordered, whether relating to public gatherings or otherwise, which imposes a penalty for noncompliance must be narrowly tailored to achieve the purpose and be based on local conditions. Likewise, any such order applicable to the general public must be "reasonable and necessary" to prevent and suppress the spread of a communicable disease and the findings supporting such an order should again be well documented.

The next section will provide an analysis of a local health officer's authority to limit or prohibit public gatherings and also the principles of reasonableness and necessity as applied to all orders applicable to the public at large.

Public Gatherings

Section 252.03(2) is fairly straightforward in the fact that a local health officer may forbid any public gathering when deemed necessary to control outbreaks or epidemics of communicable disease. However, the term "public gatherings" is not defined in statute and has not been directly interpreted by Wisconsin courts. For this reason, an analysis of what constitutes a "public gathering" according to the rules of statutory interpretation is necessary.

As our courts have recognized, "statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning."[28] Context is also important to meaning, as well as the structure of the statute in which the operative language appears.[29] For this reason,

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[27] See Wis. Stat. §§ 252.03(1) and (2).
[28] *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124 (citing *Seider v. O'Connell,* 236 Wis. 2d 211, 232, 612 N.W.2d 659.
[29] *Id.*

"statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results."[30]

In applying these rules of statutory construction, the term "public gatherings" includes all places and events that are open to the public at large. This means that the term "public gathering" includes not only gatherings in those places traditionally thought of as "public," but also gatherings in privately-owned facilities that are open to the public at large. By way of example, facilities traditionally considered public spaces include places like parks, libraries, bus stations, and technical colleges. Privately-owned facilities that also likely qualify as places of "public gathering" include places like theaters, arenas, bars, and restaurants. However, prohibitions on public gatherings should not differentiate between privately and publicly-owned facilities. Rather, such orders should apply to all places where the public is invited to gather and focus on the type and/or size of gathering affected, all the while recognizing the constitutional limits that may apply to prohibitions on public gatherings, as will be discussed further below.

Plain Meaning Interpretation

As noted above, the plain meaning of the language contained in Wis. Stat. § 252.03(2) is straightforward. A local health officer may forbid public gatherings in order to control an outbreak or epidemic. The threshold question is what constitutes a "public gathering."

Because the term "public gathering" is not defined in statute or by Wisconsin courts, the term should be construed according to common, ordinary, and accepted meaning. This can be derived from examining the dictionary definition of the term. While the phrase "public gathering" itself is not defined in the dictionary, the meaning of both "public" and "gathering" can be utilized.

Two meanings of "public" are informative here. According to the Merriam-Webster dictionary, "Public" means:

1. accessible to or shared by all members of the community; and
2. of or relating to business or community interests as opposed to private affairs.[31]

The term "gathering," means "assembly, meeting."[32]

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[30] *Id.*
[31] Merriam-Webster Dictionary, accessed on July 21, 2020, available at: https://www.merriam-webster.com/dictionary/public.
[32] Merriam-Webster Dictionary, accessed on July 21, 2020, available at: https://www.merriam-webster.com/dictionary/gathering.

Taken together, a "public gathering" is essentially an assembly or meeting of people that is accessible to or shared by all members of the community or otherwise generally related to business or community interests as opposed to private affairs. This means that the term "public gatherings" includes assemblies, meetings, or crowds in any location that is open to the public at large, whether publicly or privately owned and operated. Such facilities would also include, for example, venues made available to the public for rent, such as banquet facilities.

The limited Wisconsin case law that utilizes the term "public gathering" also suggests this broad application. For example, the Wisconsin Supreme Court has stated that:

> …certain *nongovernmental entities* have taken over the role the government formerly played *by providing areas that are used for public gatherings*. The more than 25,000 shopping centers in the United States, for example, have been described as "new downtowns," where people not only shop but also stroll, socialize and participate in community activities as they once did in downtown business districts.[33]

Additionally, in analyzing the only other Wisconsin Statute that utilizes the term "public gathering," the Wisconsin Court of Appeals referred to Wisconsin Department of Natural Resources permit conditions that required the town to obtain "all necessary signatures from residents and *proprietors of places of public gathering*."[34] The phrase "proprietors of places of public gathering" indicates that places of public gathering may have a private owner (*i.e.*, a proprietor).

Contextual Interpretation

Context and the structure of the statute in which the operative language appears is also important to determining meaning. First, context informs as to the meaning of individual words. In performing the plain meaning analysis above, a key element in determining the appropriate dictionary definition is that "[m]any words have multiple dictionary definitions; the applicable definition depends upon the context in which the word is used."[35] In this context, it is important to recognize that local health officers are provided broad mandatory authority to "promptly take *all measures necessary* to prevent, suppress and control communicable diseases."[36] Moreover, the authority to forbid public gatherings is preceded by the authority for local health officers to

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[33] *Jacobs v. Major*, 139 Wis. 2d 492, 532-33, 407 N.W.2d 832, 849 (1987) (emphasis added).
[34] *Town of Cottage Grove v. State Dep't of Nat. Res.*, 140 Wis. 2d 869, 412 N.W.2d 903 (Ct. App. 1987) (emphasis added).
[35] *Id.*, ¶ 49.
[36] (emphasis added) Wis. Stat. § 252.03(1).

"do what is reasonable and necessary for the prevention and suppression of disease." This authority is broad in scope in and of itself, and also informs as to the breadth of the subsequent provision permitting local health officers to forbid public gatherings. Stated another way, the broad grants of general authority in the same section suggests that the authority to forbid public gatherings should also be viewed broadly.

Other Measures Considered "Reasonable and Necessary"

As noted above, Wis. Stat. § 252.03 provides local health officers a broad grant of authority with respect to stopping the transmission of communicable diseases, provided that the measures taken are based on local conditions and principles of reasonableness and necessity. The question of what will be deemed "reasonable and necessary" in relation to an order becomes more difficult when a local health officer issues an order applicable to the public at large. The Court in *Wisconsin Legislature v. Palm*, 2020 WI 42 and a subsequent Attorney General Opinion[37] provide some insight relevant to the scope of local health officer authority.

While the case is certainly not an easy read with numerous concurring and dissenting opinions, the Court's decision in *Legislature v. Palm* highlights two concepts important to the analysis of the scope of a local health officer's authority. First, the Court examined the legal challenges associated with a legislative body's delegation of law-making authority to an unelected official. Next, the Court reviewed the context of Wis. Stat. ch. 252 to determine the scope of the DHS Secretary's authority. While not identical, the DHS Secretary's authority could be considered analogous to a local health officer's statutory authority.

The Supreme Court's decision in *Palm* opens with the following statements, which framed the Court's review of the DHS Secretary's authority:

> This case is about the assertion of power by one unelected official, Andrea Palm, and her order to all people within Wisconsin to remain in their homes, not to travel and to close all businesses that she declares are not "essential" in Emergency Order 28. Palm says that failure to obey Order 28 subjects the transgressor to imprisonment for 30 days, a $250 fine or both. [38]

The Court in *Palm* appeared to be concerned with what may be described as health officer regulatory overreach. In its analysis of the application of the Wis. Stat. ch. 227 rule-making

[37] OAG-03-20.
[38] *Palm,* ¶ 1.

process to implementation of Emergency Order #28, the *Palm* Court emphasized its concern with the extent of power that Secretary Palm would necessarily possess if no legislative oversight were required (*i.e.*, the power to create a law applicable to all people and to "subject people to imprisonment when they disobeyed her order").[39] The *Palm* Court employed the "constitutional-doubt principle" whereby the Court disfavors statutory interpretations that unnecessarily raise serious constitutional questions about the statute under consideration.[40] While some delegation of legislative authority to administrative agencies is permissible, such a delegation is only permissible if there are adequate standards and procedural safeguards to ensure that the administrative agency acts within the legislative purpose.[41] In *Palm*, the Court acknowledged that the delegation of powers suggested by Secretary Palm raised serious constitutional concerns, particularly separation of powers issues.[42] According to the Court, these are exactly the types of issues the Wis. Stat. ch. 227 rule-making process is meant to address.[43]

Even though local health officer orders are not governed by Wis. Stat. ch. 227, the Supreme Court may, if given the opportunity, express similar concerns as to the need for oversight from a county board, city council, or village board having jurisdiction if a local health order applicable to the general public is to be enforced.[44] For this reason, it may be prudent to have local health officer orders impacting the public at large and implementing mandatory measures (*i.e.*, subjecting a person to a penalty for noncompliance) be subject to review by the county board (or other applicable local government governing body). Such a review process is not required by statute, but doing so would directly address the *Palm* Court's concerns and aid in the "reasonable and necessary" analysis.

While it is true that the *Palm* Court reached its conclusion in part because it determined that Emergency Order #28 constituted a rule subject to administrative rule-making procedures (a procedure to which local health officers are not subject), the Court also provided that Emergency Order #28 "goes far beyond what is authorized in Wis. Stat. § 252.02(4)."[45] As a result, even though the Court did not directly address local health officer authority, local health officer authority under ch. 252 would likely not be construed as greater than DHS's authority

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[39] *Id.*, ¶ 24.
[40] *Id.*, ¶ 31.
[41] *Id.*, ¶ 33.
[42] *Id.*, ¶ 67.
[43] *Id.*, ¶ 34.
[44] See 5 McQuillin Mun. Corp. § 18:11 (3d ed.)(an ordinance's "enforcement cannot be left to the will or unregulated discretion of any municipal authority, officer, or officers." (additional citations omitted.)
[45] *Palm*, ¶ 49.

with respect to the broad measures addressed in Emergency Order #28 (in fact, DHS statutory authority in this regard appears to be more expansive in several areas). For this reason, a court may find that local health officer orders issued to the same scope of Emergency Order #28 also exceed a local health officer's authority and, as a result, be deemed invalid if challenged.

Unfortunately, the *Palm* Court did not provide guidance as to what measures ***would*** fall within DHS' scope of authority. Despite this, however, some additional guidance can be inferred from the context of Wis. Stat. § 252.03. The scope of local health officer authority can necessarily be inferred from the other powers that are expressly granted. For example, a local health officer is explicitly granted authority to limit public gatherings when reasonable and necessary based on local conditions (as detailed above). It can be inferred from this that a court may view the regulation of purely ***private*** gatherings as circumspect absent a strong and compelling finding that such action was reasonable and necessary according to local conditions. The legislature's explicit grant of authority related to public gatherings would be superfluous if the limitation of gatherings generally was deemed to fall within the "reasonable and necessary" scope.

In response to questions posed by counties and other local governments, the Wisconsin Attorney General issued an opinion as to the effect *Palm* had on local health officer authority.[46] The Attorney General concluded that *Palm* does not directly control powers under the local health officer statutes because the *Palm* Court only analyzed the statute granting DHS authority with respect to communicable diseases, *i.e.*, Wis. Stat. § 252.02. While noting that *Palm* may indirectly affect local health officer authority, the Attorney General also noted that this result was not entirely clear. The Attorney General provided the following guidance for local health officer orders that would support a finding of enforceability:

> *Third*, the *Palm* decision highlighted three particular exercises of DHS's powers as outside the scope of its statutory authority under Wis. Stat. § 252.02: directing people to stay at home, forbidding certain travel, and closing certain businesses. Even as to those three measures, the analysis may not apply to local powers under Wis. Stat. § 252.03. The court's reasoning emphasized the availability of criminal sanctions for violations, and applied an interpretative analysis using provisions of 2011 Wis. Act 21 and Wis. Stat. ch. 227 that apply only to state agencies. *Palm*, 2020 WI 42, ¶ ¶ 45-47, 51, 52. A local order issued under Wis. Stat. § 252.03 that does not threaten criminal penalties, as recommended above,

[46] OAG-03-20.

> cannot run afoul of the court's first concern, and 2011 Wis. Act 21 and chapter 227 would not apply to a local authority. Nevertheless, the local authority should ensure that any measures that direct people to stay at home, forbid certain travel, or close certain businesses speak specifically to the local authority's statutory power to "prevent, suppress and control communicable diseases" and "forbid public gatherings when deemed necessary to control outbreaks or epidemics." Wis. Stat. § 252.03(1)-(2).[47]

The Attorney General also noted that *Palm* arguably does not even apply to local health officer orders because local health officers are not required to follow the same rule-making procedures as state agencies.[48] However, the implications of the *Palm* Court's decision may be broader than the Attorney General concluded, for all of the reasons discussed above.

Constitutional Limitations on Orders of General Applicability

In addition to the requirement that local health orders issued under Wis. Stat. § 252.03 be based on local conditions and be reasonable and necessary based on such conditions, local health orders must also comply with certain constitutional standards.[49] Importantly, constitutional considerations dictate local health orders restricting or forbidding public gatherings (and perhaps other categories of orders applicable to the public at large) must be narrowly tailored to achieve the purpose and based on actual local conditions. Indeed, orders limiting or forbidding public gatherings implicate a number of fundamental constitutional rights, such as freedom to travel, freedom of religion, freedom of assembly, and freedom of speech. When a government action implicates a fundamental constitutional right, the action must satisfy a "strict scrutiny" standard.[50] The "strict scrutiny" standard, while a separate and distinct test utilized in the context of a constitutional challenge to a statute, regulation, or ordinance, appears similar to the reasonable and necessary standard established by Wis. Stat. § 252.03 in that the purpose for a particular regulation relating to communicable disease will be evidenced through what a local health officer determines is reasonable and necessary.

In order to satisfy the strict scrutiny test, the government must demonstrate its action furthered a "compelling governmental interest," and that the action was "narrowly tailored" to achieve that

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[47] OAG-03-20.
[48] *Id.*
[49] It is beyond the scope of this Guidance to review and analyze all constitutional issues. Therefore, this section is intended merely as an overview of the constitutional considerations.
[50] Leslie Kendrick, *Content Discrimination Revisted,* 98 Va. L. Rev. 231, 237 (2012); *see also Free Speech Doctrine After Reed v. Town of Gilbert,* 129 Harv. L. Rev. 1981 (2015) (noting most government actions fail to satisfy strict scrutiny).

interest. Stated another way, constitutional rights may be limited so long as there is a strong enough reason for doing so, and so long as the restrictions are implemented in the least restrictive manner possible. A government action is narrowly tailored if it precisely places as few restrictions as possible on constitutional liberties.[51] Additionally, the government must demonstrate that it did not choose a means that *unnecessarily* burdens or restricts a constitutional liberty.[52] Rather, laws "affecting constitutional rights must be drawn with 'precision.'"[53]

Another important constitutional standard arises out of the Equal Protection Clause. Equal protection jurisprudence prohibits administering laws in a manner that treats similarly situated people differently.[54] Equal protection requires that there exist reasonable and practical grounds for the classifications drawn.[55] Similar to restrictions on fundamental constitutional rights, restrictions on a "suspect class" must pass the strict scrutiny test discussed immediately above.[56] Suspect classifications include restrictions based on race, national origin, religion, and alienage. Where regulations do not implicate suspect classifications, the government must show that the challenged classification is rationally related to a legitimate governmental interest in order for the regulation to be upheld. For example, a local health order that restricts chain restaurants to take out food only, but permits local restaurants to have dine in customers would likely violate the equal protection clause unless a logical reason for treating the two similarly-situated classes differently can be shown.

Furthermore, local health orders must not violate the Due Process Clause. The 14th Amendment Due Process Clause provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." A government "violates this guarantee by taking away someone's life, liberty, or property under a … law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement."[57] A law that fails to provide fair notice of required or prohibited conduct, and fails to provide standards for those who enforce the law and adjudicate guilt is unconstitutionally vague.[58]

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[51] *State v. Crute,* 2015 WI App 15, ¶ 30, 360 Wis. 2d 429, 445-46, 860 N.W.2d 284, 292.
[52] *Dunn v. Blumstein,* 405 US 330 (1972).
[53] *Id.*, 343.
[54] *Engquist v. Ore. Dep't of Agr.,* 553 U.S. 591, 602 (2008).
[55] *State v. McManus,* 152 Wis. 2d 113, 130, 447 N.W.2d 654, 660 (1989).
[56] *Szarzynski v. YMCA, Camp Minikani,* 184 Wis. 2d 875, 886, 517 N.W.2d 135, 139 (1994).
[57] *Johnson v. U.S.,* 135 S. Ct. 2551, 2556 (2015).
[58] *State v. McManus,* 152 Wis. 2d 113, 135, 447 N.W.2d 654, 662 (1989).

In order to satisfy these standards,[59] local health orders issued in response to a communicable disease or pandemic that restrict or prohibit the public at large (or otherwise implicate protected constitutional rights) and provide a penalty for violation must: (1) be narrowly tailored, (2) only restrict activities (*e.g.*, public gatherings) to the extent necessary to prevent or limit the spread of the disease, and (3) be precise and well defined in order to give the public fair notice of the prohibited conduct. An order that does not adhere to these principles will be open to constitutional challenges as to its enforceability.

[59] The discussion surrounding constitutional rights is not intended as exhaustive inasmuch as any number of rights may be implicated depending upon the terms of a particular order. For this reason, it is important that local governments and local health officers work closely with counsel in drafting.

ENFORCEMENT OF LOCAL HEALTH OFFICER ORDERS

Just as the statutes, administrative regulations, and applicable precedent suggest varying levels of authority relating to the three categories of orders discussed in this Guidance, so too do these same sources suggest differing enforcement mechanisms. Once again, the isolation or quarantine orders and "outbreak" orders may be enforced through an established mechanism providing judicial oversight and review as set forth in the administrative code. However, there is no similar process for orders of general application.

ORDERS WITH AND WITHOUT ENFORCEMENT MECHANISMS

As an initial matter, it is important to note that nothing requires a local health officer to include an enforcement mechanism in a public health order. A local health officer's order is an appropriate exercise of a local health officer's authority so long as it meets the standards discussed above. If a public health order does not include a stand-alone enforcement mechanism, *i.e.*, an enforcement mechanism separate from specific enforcement measures explicitly granted in the administrative code, the enforcement issues discussed below are inapplicable. While such an order is more akin to an advisory or guidance, it is an order nonetheless. Provided the order is clear in that it does not impose a penalty for violation, this type of order also does not face the same constitutional concerns discussed above because no fundamental rights are actually limited (*i.e.*, compliance is ultimately a voluntary choice).

For these reasons, it is highly recommended that local health officers utilize clear and, to the extent practicable, uniform language in describing what it is that a local health officer issues. For example, an order that is not intended to have an enforcement mechanism ought to clearly indicate it is advisory. An order that is intended as enforceable should clearly state the enforcement mechanism and reference the potential penalties associated with violation.

The requirements and standards set forth below should be followed if a local health officer makes compliance with a public health order mandatory by including enforcement mechanisms as a part of the order. For isolation and quarantine orders and outbreak orders, reference to the enforcement mechanism should be identified in the body of the order. Likewise, an order of general applicability should contain reference to the ordinance under which it will be enforced.

ENFORCEMENT OF ISOLATION OR QUARANTINE ORDERS

Questions of enforcement arise once the local health officer determines whether to isolate or quarantine: what if a person refuses to follow the order to isolate or quarantine? Fortunately, the statutes and administrative code provide guidance for local health officers to follow in the event of a communicable disease outbreak and isolation or quarantine is warranted to stop the spread of the disease.

As with any issue surrounding enforcement of an order or law, voluntary compliance is the best and preferred outcome. It is only when all efforts at voluntary compliance with an isolation or quarantine order have been exhausted that a local health officer should look at formal enforcement options. If formal enforcement becomes necessary, one action a local health officer may take is to petition a court for an enforcement order. There are a couple of benefits to this approach. First, court oversight helps avoid challenges of overreach. Second, the judicial process provides a guarantee of due process for a party adversely impacted by the court's decision. This takes the onus of ensuring the provision of such rights off of the local government.

Pursuant to Wis. Admin Code § DHS 145.06(5), a local health officer may petition a court of record to order a person in violation of a specific order promulgated pursuant to Wis. Admin Code § DHS 145.06(4), including a quarantine or isolation order, to comply.[60] When petitioning a court, the local health officer must ensure:

(a) That the petition is supported by clear and convincing evidence of the allegation;
(b) That the respondent has been given the directive in writing, including the evidence that supports the allegation, and has been afforded the opportunity to seek counsel; and
(c) That the remedy proposed is the least restrictive on the respondent which would serve to correct the situation and to protect the public's health.

Sample forms related to isolation and quarantine orders and enforcement are provided in Appendices B through G.

[60] Wis. Admin Code § DHS 145.06(5).

Another option available to local health officers is the employment of "quarantine guards" to execute the local health officer's isolation and quarantine orders.[61] It is important to note that quarantine guards may be employed with or without a court order related to isolation or quarantine. However, for the reasons discussed above, a court order allowing for the use of quarantine guards may be a preferred enforcement method, time permitting, so as to ensure judicial oversight and preservation of individual rights and liberties.

Pursuant to Wis. Stat. § 252.06(5), a local health officer "shall employ as many persons as are necessary to execute his or her orders and properly guard any place if quarantine or other restrictions on communicable disease are violated or intent to violate is manifested."[62] The persons shall be sworn in as quarantine guards, shall have police powers, and may use "all necessary means to enforce" both state laws and a local health officer's orders in the prevention and control of communicable diseases."[63] While not required under the statutes or administrative code, DHS guidance states that quarantine guards are usually existing law enforcement officers. Nonetheless, law enforcement officers may not be the best candidates depending upon the circumstances. It is highly recommended that local health officers coordinate with local law enforcement to discuss the use of quarantine guards. In an ideal world, the discussion should happen before emergent conditions require that such guards be deployed.

If a person refuses to comply with an isolation or quarantine order even after the assistance of quarantine guards, the local health officer may issue a violation order to remove the person and confine him or her.[64] Again, best practice should this action become necessary is to obtain a court order, pursuant to the process set forth in Wis. Admin Code § DHS 145.06 prior to removal of the violator. In the event the person becomes a danger to the health of other residents of the detention facility, the local health officer or the health officer of that institution shall issue a written order for the person to be confined at a "hospital or other place of safety" to be provided/cared for and kept secure.[65]

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[61] Wis. Stat. § 252.06(5).
[62] *Id.*
[63] *Id.*
[64] Wis. Stat. § 252.06(6)(a).
[65] Wis. Stat. § 252.06(6)(b).

ENFORCEMENT OF OUTBREAK ORDERS

As with isolation and quarantine orders, the best and preferred outcome is to gain voluntary compliance with an order specific to an individual or group of persons related to an actual or potential outbreak. Local health officers should maintain a robust process for educating persons or businesses subject to a contemplated order as to why such an order would be reasonable and necessary under the circumstances. This will allow for an informed discussion surrounding the potential order and, in addition, allow the impacted parties time to determine how to best manage recommended preventative measures and their duration.

If voluntary compliance is not achieved, a few avenues are available to local health officers to enforce specific orders related to an outbreak or potential outbreak location. First, as discussed above, local health officers may petition a court of record pursuant to Wis. Admin Code § DHS 145.06(4) to order a person in violation of an "outbreak" order to comply. Orders issued pursuant to Wis. Admin Code § DHS 145.06(4) include the authority to direct the person to comply with any of the following (singly or in combination), as appropriate:

(a) Participate in a designated program of education or counseling.
(b) Participate in a defined program of treatment for the known or suspected condition.
(c) Undergo examination and tests necessary to identify a disease, monitor its status or evaluate the effects of treatment on it.
(d) Notify or appear before designated health officials for verification of status, testing or direct observation of treatment.
(e) Cease and desist in conduct or employment which constitutes a threat to others.
(f) Reside part-time or full-time in an isolated or segregated setting which decreases the danger of transmission of the communicable disease.
(g) Be placed in an appropriate institutional treatment facility until the person has become noninfectious.[66]

When petitioning a court for an order to enforce a public health order issued pursuant to Wis. Admin Code § DHS 145.06(4), the local health officer must ensure:

(a) That the petition is supported by clear and convincing evidence of the allegation;

[66] Wis. Admin Code § 145.06(4).

(b) That the respondent has been given the directive in writing, including the evidence that supports the allegation, and has been afforded the opportunity to seek counsel; and

(c) That the remedy proposed is the least restrictive on the respondent which would serve to correct the situation and to protect the public's health.

In addition, Wis. Admin Code § DHS 145.06(6) explicitly provides that a local health officer "may direct persons who own or supervise real or physical property or animals and their environs, which present a threat of transmission of any communicable disease under sub. (1), to do what is reasonable and necessary to abate the threat of transmission. Persons failing or refusing to comply with a directive shall come under the provisions of sub. (5) and this subsection." In other words, a local health officer may also follow the petition process under Wis. Admin Code § DHS 145.06(5) to obtain a court order to enforce public health orders issued as to the owner(s) of specific businesses or locations.[67]

Sample forms related to the court petition process are provided in Appendices H through K. While the forms are similar to the forms related to the isolation and quarantine process, they require much more customization. Local governments must consult with their corporation counsel or city/village attorney prior to adopting or utilizing the forms.[68]

Another option available to a local health officer is to enforce a specific/outbreak order pursuant to citation authority granted under a local ordinance. This option exists independent of the enforcement mechanism set forth in Wis. Admin Code § DHS 145.06 and, therefore, may be used either in conjunction with that enforcement process or on a stand-alone basis. The independent enforcement mechanism for a local health officer order is found in Wis. Stat. § 252.25, which provides:

> Any person who willfully violates or obstructs the execution of *any state statute or rule, county, city or village ordinance or departmental order under this chapter and relating to the public health*, for which no other penalty is prescribed, shall be imprisoned for not more than 30 days or fined not more than $500 or both.
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> (Emphasis added).

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[67] While not a specific enforcement mechanism, most employers are subject to regulation by the Occupational Safety and Health Administration ("OSHA"). Some types of businesses are either required or highly recommended to take certain actions (*e.g.*, mask wearing). Many times, alerting OSHA to current circumstances provides additional compliance motivation. Whenever contact with OSHA is considered as an option, local health officers should review OSHA rules and the latest guidance and requirements with their counsel.

[68] It should also be noted that there may be circumstances where an "outbreak" enforcement situation may be addressed under the procedures established in Wis. Stat. ch. 254, and related local ordinances, relating to human health hazards.

Under Wis. Stat. § 252.25, it is clear that a local government must have a concomitant ordinance to enforce a local health officer's orders. In addition, any ordinance allowing for enforcement must meet the standards related to notice and specificity discussed in *Palm* and other precedent.

The *Palm* Court opined that even though Wis. Stat. § 252.25 authorizes the imposition of criminal penalties for violations of public health orders, such criminal conduct must still be set out with "specificity in the statute" or in "a properly promulgated rule before criminal sanctions could follow violations."[69] Importantly, any actions that give rise to a "crime" "must 'meet the standards of definiteness applicable to statutory definitions of criminal offenses.'"[70]

Because a local health officer order seeking to impose civil forfeiture for violations does not rely on a specific statutorily defined crime, the penalties must be based on an existing ordinance which explicitly sets forth the elements giving rise to a civil forfeiture. Absent such an ordinance, a local health officer order is unlikely to meet the specificity and fair notice requirements cited by the *Palm* Court, which would apply to a civil forfeiture proceeding.[71] However, it is clear that local health officers cannot impose an order seeking imprisonment or other criminal penalties, as the Wisconsin Legislature has limited the definition of a "crime" to only include conduct prohibited by state law.[72]

ENFORCEMENT OF GENERAL ORDERS

Enforcement Issues & Concerns

Neither the statutes nor the administrative code provide for a detailed enforcement mechanism of a local health officer's general order. It is important to understand that a local health officer's order, standing alone, may not be "enforced" – make a violator subject to civil forfeiture – absent a local ordinance allowing for such enforcement. Other than the petition process contained within the administrative code and discussed above, the only mechanism of enforcement is via local ordinance, as set forth in Wis. Stat. § 252.25, which provides:

> Any person who willfully violates or obstructs the execution of *any state statute or rule, county, city or village ordinance or departmental order under this chapter*

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[69] *Palm*, ¶ 37.
[70] *Id.* (citing *State v. Courtney*, 74 Wis. 2d 705, 709, 247 N.W.2d 714 (1976)).
[71] *City of Milwaukee v. Nelson*, 149 Wis. 2d 434, 447, 439 N.W.2d 562 (1989)(citations omitted).
[72] Wis. Stat. § 939.12; *State v. Thierfelder*, 174 Wis. 2d 213, 222, 495 N.W.2d 669 (1993) (holding that municipalities cannot impose imprisonment under a municipal ordinance, because municipalities cannot create crimes under Wisconsin Statutes).

> *and relating to the public health*, for which no other penalty is prescribed, shall be imprisoned for not more than 30 days or fined not more than $500 or both.

There are several considerations that impact the terms of a local ordinance providing an enforcement mechanism. Specifically, any local ordinance must satisfy the constitutional specificity and certainty requirements discussed in the precedent cited above and discussed in the context of the state's order in *Palm*. Again, it is also clear that an order based on such an ordinance may only impose a forfeiture for violation and may not impose imprisonment or other criminal penalties.[73]

While there has been much litigation across the country surrounding the enforcement of general health orders and the constitutionality of such orders, those cases do not provide clear guidance because the vast majority of the cases involve a state governor exercising emergency authority as a "politically accountable official." As such, the analysis in those cases is arguably limited to situations involving executive branch emergency powers, and also does not address the *Palm* Court's constitutional concerns over the lack of legislative/elected official or politically accountable oversight over the implementation and enforcement of public health orders.

For example, on May 29, 2020, the U.S. Supreme Court issued a 5-4 decision denying the plaintiff's application for injunctive relief. The denial allowed the California governor to continue enforcement of some restrictions on religious gatherings in light of the pandemic.[74] However, it must be noted that the denial of injunctive relief is not the same as a decision on the merits. Specifically, a plaintiff seeking an injunction in a case such as this must show that it is "indisputably clear" that the governmental limitation is unconstitutional – a very difficult burden. In this particular case, the Supreme Court rejected a California church's contention that attendance caps (25% of capacity or a maximum of 100 persons) discriminated against religion. Chief Justice John Roberts, in a concurring opinion, rejected the church's challenge in light of legitimate public health concerns:

> The Governor of California's Executive Order aims to limit the spread of COVID-19, a novel severe acute respiratory illness that has killed thousands of people in California and more than 100,000 nationwide. At this time, there is no known cure, no effective treatment, and no vaccine. Because people may be infected but

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[73] Wis. Stat. § 939.12; *State v. Thierfelder*, 174 Wis. 2d 213, 222, 495 N.W.2d 669 (1993) (holding that municipalities cannot impose imprisonment under a municipal ordinance, because municipalities cannot create crimes under Wisconsin Statutes).
[74] *South Bay United Pentecostal Church, et al. v. Gavin Newsom, Governor of California, et al.*, 140 S.Ct. 1613 (2020).

> asymptomatic, they may unwittingly infect others. The Order places temporary numerical restrictions on public gatherings to address this extraordinary health emergency.
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> ***
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> The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts "[t]he safety and the health of the people" to the politically accountable officials of the States "to guard and protect." *Jacobson v. Massachusetts*, 197 U.S. 11, 38, 25 S.Ct. 358, 49 L.Ed. 643 (1905). When those officials "undertake[ ] to act in areas fraught with medical and scientific uncertainties," their latitude "must be especially broad." *Marshall v. United States*, 414 U.S. 417, 427, 94 S.Ct. 700, 38 L.Ed.2d 618 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an "unelected federal judiciary," which lacks the background, competence, and expertise to assess public health and is not accountable to the people. *See Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 545, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985).
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> That is especially true where, as here, a party seeks emergency relief in an interlocutory posture, while local officials are actively shaping their response to changing facts on the ground. The notion that it is "indisputably clear" that the Government's limitations are unconstitutional seems quite improbable.

Similarly, on June 16, 2020, the Seventh Circuit Court of Appeals denied injunctive relief sought by a church against enforcement of the Illinois governor's executive order that was designed to stem the spread of COVID-19:

> The disease is readily transmissible and has caused a global pandemic. As of June 16, 2020, 133,639 persons in Illinois have tested positive for COVID-19, and 6,398 of these have died. Epidemiologists believe that those numbers are undercounts—persons with no or mild symptoms may not be tested, some people die of the disease without being tested, and some deaths attributed to other causes may have been hastened or facilitated by the effect of COVID-19 weakening the immune system or particular organs.

> Experts think that, without controls, each infected person will infect two to three others, causing an exponential growth in the number of cases. Because many of those cases require intensive medical care, infections could overwhelm the medical system. The World Health Organization, the Centers for Disease Control, and many epidemiologists recommend limiting the maximum size of gatherings (the Governor's cap of ten comes from a CDC recommendation), adopting a policy of social distancing (everyone staying at least six feet away from anyone not living in the same household—ten feet if the other person is singing or talking loudly), isolating people who have the disease, wearing face coverings so that people who have the disease but don't know it are less likely to infect others, and tracing the contacts of those who test positive. Reducing the number of people at gatherings protects those persons, and perhaps more important it protects others not at the gathering from disease transmitted by persons who contract COVID-19 by attending a gathering that includes infected persons.
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> ***
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> While all theaters and concert halls in Illinois have been closed since mid-March, sanctuaries and other houses of worship were open, though to smaller gatherings. And under Executive Order 2020-38 all arrangements for worship are permitted while schools, theaters, and auditoriums remain closed. Illinois has not discriminated against religion and so has not violated the First Amendment . . .[75]

The few cases that have addressed county shelter in place orders have adopted the reasoning of the courts evaluating statewide executive orders. For instance, in *Altman v. County of Santa Clara*, No. 20-2180 (N.D. Cal. June 2, 2020), the court rejected Second Amendment[76] challenges to orders issued by several California counties because it found that the public's interest in controlling the spread of COVID-19 outweighs its interest in preventing the constitutional violations alleged.

There is also pending litigation in Wisconsin surrounding enforcement of local health orders and related ordinances. In *Yandel v City of Racine*, et al., Racine County Circuit Court Case

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[75] *Elim Romanian Pentecostal Church v. Pritzker*, No. 20-1811, 2020 WL 3249062 (7th Cir. June 16, 2020); *see also Illinois Republican Party v. Pritzker*, No. 20-3489, 2020 WL 3604106 (N.D. Ill. July 2, 2020) (denying injunctive relief related to the Illinois Governor's executive order because "Plaintiffs have a less than negligible chance of prevailing on their constitutional claims because the current crisis . . . advances the Governor's interest in protecting the health and safety of Illinois residents."); *Cassell v. Snyders*, No. 20 C 50153, 2020 WL 2112374 (N.D. Ill. May 3, 2020) (denying injunctive relief related to the Illinois Governor's executive order because it "satisfies minimal constitutional requirements as they pertain to religious organizations").

[76] Plaintiffs challenged the County's shelter in place orders under the Second and Fourteenth Amendments due to the impact of the orders on firearms retailers and shooting ranges.

No. 20CV1045, 2020AP1137, a business owner challenged the constitutionality of the City of Racine health officer's "Safer Racine" order, which amounted to a comprehensive general order similar to Wisconsin's Safer at Home Emergency Order #28 and subsequent Badger Bounce Back orders. Following the "Safer Racine" order, the Racine health officer issued subsequent orders titled "Forward Racine." On June 19, 2020, the Racine County circuit court issued an injunction, which prohibited the Racine health officer from issuing, and the City of Racine from enforcing, the existing or anticipated orders. In response to the court's decision, the Racine Common Council codified the Forward Racine order in ordinance. Following the Racine Common Council's actions, the court again reviewed the matter and issued a decision finding the ordinance unconstitutional. The City of Racine immediately appealed the court's decision and asked the Court of Appeals for an order staying the circuit court's decision pending appeal. On July 3, 2020, the Court of Appeals granted the requested stay citing the presumption of constitutionality that is afforded a duly enacted ordinance, plus the irreparable harm that would result from the City's inability to control a pandemic and safeguard its residents vis-à-vis the duly-enacted ordinance. As a result, the Safer Racine ordinance is currently in full force and effect pending the outcome of the legal proceedings currently pending in the Court of Appeals. While not a decision on the merits, the Court of Appeals' ruling on the City's request for a stay underscores the importance, in a court's view, of legislative oversight in the enforceability process relating to health orders.[77]

Litigation was also filed in federal court relating to local health officer authority to issue rules of general application. In *Yang,* et al. *v. Powers,* et al., U.S. District Court, Eastern Dist. of Wisconsin Case No. 20-CV-760, the plaintiffs contend that several orders issued by various local health officers around the state violate plaintiffs' rights guaranteed under the United States Constitution. As of the time of this writing, the court has dismissed the claims, without prejudice, because of procedural errors associated with the numerous seemingly unrelated claims against numerous defendants that should properly proceed as independent lawsuits. The court granted the plaintiffs additional time to refile and it is unknown whether the plaintiffs will do so or abandon their claims, whether permanently or for the time being.

[77] The Court of Appeals discussed the "presumption of constitutionality to a duly enacted ordinance." As well, the Court noted that "a strong showing is made that pursuant to Wis. Stat. § 252.03, a legislative body (State or local) has the authority to authorize a health official to impose restrictions on the assembly of persons to prevent communicable diseases." July 3, 2020, Order at 3.

Enforcement Mechanisms and Considerations

Due to the unique enforcement issues for general orders and varying public health landscapes from county to county, there is not a one-size-fits-all approach to the implementation and enforcement of general public health orders. As noted above, local health officers will start by conducting a thorough investigation in order to evaluate risk to the community. The response should always be to seek voluntary compliance from the public as the first and best approach. However, in some cases the need for enforcement mechanisms is unavoidable. For this reason, it is highly recommended that local health officers implement a high level of coordination with corporation counsel or their city/village attorney, local law enforcement, and the local legislative body (*i.e.*, the county board, city council, or village board). Continued communication and cooperative efforts are necessary in order to avoid confusion, uncertainty, and an inability to enforce.

In order for a local health officer, or any agent of a local government, to enforce a public health order applicable to the general public, a local ordinance providing such enforcement authority is necessary under Wis. Stat. § 252.25. Any such ordinance must be enacted by the governing body of the particular local government within the local health officer's jurisdiction (*e.g.*, the county board or city council/village board). As discussed above, such an ordinance may not impose imprisonment or other criminal penalties.

Even though the decision applied only to DHS, the *Palm* Court's reasoning suggests that legislative body oversight may be a prerequisite to an unelected official's (*e.g.*, a local health officer) authority to enforce a public health order applicable to the public at large without raising significant constitutional concerns surrounding separation of powers.[78] There is an argument this requirement applies even when a local government has enacted a general enforcement ordinance under Wis. Stat. § 252.25 – *i.e.*, an ordinance that simply makes violation of a health order subject to penalty. In the context of a local health officer's enforcement authority, legislative oversight generally refers to oversight by the governing body that appointed the local health officer (generally a county board, city council, or village board). So the question becomes how a local government can balance the need to react to a communicable disease in a swift and efficient manner, yet provide the local legislative body an opportunity to take official action on any order applicable to the public at large where an enforcement mechanism (separate from

[78] See 5 McQuillin Mun. Corp. § 18:11 (3d ed.)(an ordinance's "enforcement cannot be left to the will or unregulated discretion of any municipal authority, officer, or officers.")(Additional citations omitted.)

the enforcement provisions in the Administrative Code applicable to a specific person(s)) is desired.

There is an argument that the only legislative oversight necessary is the local government's governing body granting authority to the local health officer to issue orders and then make violation of such orders punishable by forfeiture. Indeed, such a process appears to be wholly consistent with Wis. Stat. ch. 252. However, there is also an argument, based upon *Palm* and the precedent discussing delegation of legislative authority, that some additional means of legislative body oversight is necessary.

In addition, certain of the cases that have addressed health orders, and many of the legal commentators addressing the same subject, have noted the importance of durational limitations on the exercise of health officer authority.[79] In simple terms, a health officer exercising emergency powers to take immediate action to address a communicable disease is different than a broad health order of long or unlimited duration. By limiting the duration of a health order applicable to the public at large containing a penalty for noncompliance, the delegation of authority to a health officer is made only for the time necessary to address an urgent circumstance. Indeed, emergency health orders that limit activities for a short time to address the spread of a communicable disease are likely to be viewed more favorably than restrictive orders having no expiration. Placing durational limitations on the enforceability component of a general health order could also include a "passive review" process whereby the authority to issue a health order applicable to the public at large is authorized by ordinance, but only for a short time and only if the legislative body (county board/common council/village board) does not take action specifically nullifying the portion of the health order establishing a penalty for noncompliance.

When additional oversight is necessary or desired, it is difficult to identify any one preferred method. The precise nature and process for legislative oversight is highly dependent upon the customs and practices associated with a local government's governance process. Methods of providing legislative oversight might include:

- Delegating oversight responsibility to an officer or committee of the local government with provision for the governing body to later ratify or nullify the official action taken.

[79] See, *e.g.*, *South Bay United*, 140 S. Ct. 1613, which recognized the "temporary" nature of the restrictions.

- Delegating oversight responsibility to a committee of the governing body, which would take formal action on the proposed order.
- As discussed above, granting the health officer certain "emergency" powers and thereafter providing a "passive review" process for the governing body whereby informed inaction results in agreement with the proposed order.
- Formal action by the legislative body codifying all or part of an order similar to the Racine Common Council's action with respect to the Safer Racine order discussed above.

There are likely additional methods of providing legislative oversight and the identification of certain methods here is neither intended as an exhaustive delineation nor a suggestion as to a preferred method. It is important to note that none of the oversight methods has been tested in litigation and there is no precedent applicable to this situation. As a result, it is important to engage in deliberative discussion regarding which method of oversight will be most workable understanding that the less a governing body is involved in the process, the more likely the process will be open to legal challenge.

Beyond the oversight process, the materials below will provide guidance and recommendations for the elements that an ordinance enacted pursuant to Wis. Stat. § 252.25 should include. Given the complexities associated with the legal analysis, it is important that local officials seek and follow the advice of their corporation counsel or city/village attorney relating to the concepts surrounding legislative oversight.

COMPONENTS OF A COMMUNICABLE DISEASE ORDINANCE

Different local governments have different templates and customs related to ordinance drafting. The purpose of this section is not to replace local templates and customs, nor is the purpose to provide a template for an ordinance. Instead, this section will provide an overview of elements that a local government should consider when drafting an ordinance related to communicable disease.

Likewise, an ordinance relating to communicable disease is not required to be a stand-alone ordinance. Indeed, in many local governments, communicable disease regulations are subsumed within a broader public health ordinance. This section will not provide guidance on issues beyond the communicable disease provisions contained in Wis. Stat. ch. 252. For these reasons, and many more, it is imperative that local governments work with their counsel in drafting an appropriate ordinance.

PURPOSE AND AUTHORITY

The purpose or "intent" portion of an ordinance establishes the public policy rationale for the local government's exercise of regulatory authority. In the case of an ordinance relating to communicable disease, the rationale is to provide for the health and safety of the residents of a local government. In addition to providing the purpose of the regulation, this section should also contain a recitation of the legal foundation for the ordinance. In this case, the legal authority for such an ordinance is found in Wis. Stat. ch. 252.

This section of the ordinance should also contain the general terms common to other ordinances related to jurisdiction, effective dates, interpretation, and severability.

HEALTH OFFICER DUTIES

A local health officer's duties extend beyond the investigation, reporting, and regulation of matters relating to communicable disease discussed in this Guidance. A local government with a local health officer should have an existing ordinance describing the duties. Those ordinances should be reviewed and potentially updated as part of the process for developing or revising a communicable disease ordinance. Likewise, Wis. Stat. ch. 252 and the related administrative code provisions provide descriptions for a health officer's duties in relation to communicable disease. It is important that all such applicable provisions be cited and considered for

incorporation into an ordinance by reference to ensure consistency between the ordinance and state statute.

DEFINITIONS

Ordinances often repeat terminology throughout the body of the ordinance. A definitions section helps ensure that terms are defined in a manner consistent with the intent of the governing body. Some of the most common terms in a communicable disease ordinance, which would be candidates for definition, include:

- Board of Health
- Board
- Communicable Disease
- Department
- Isolation
- Local Health Officer
- Owner
- Person
- Public Gathering
- Quarantine

ENFORCEABILITY LANGUAGE

As discussed above, not all orders emanating from a local health officer will contain an independent enforcement mechanism under ordinance. In an effort to provide clarity to the public and the officers and employees charged with implementation of the ordinance, an ordinance should specify the language orders will utilize to invoke the enforcement mechanisms discussed in this Guidance. It is important to remember that the enforcement mechanisms may be different depending upon the circumstances – there may be occasion to invoke the process in Wis. Admin Code § DHS 145.06, *et seq.*, the civil forfeiture provision in an ordinance, or both depending upon the nature of an order and a person's conduct in relation to an order.

INTERFERENCE/OBSTRUCTION WITH ORDERS ENFORCEABLE UNDER THE ORDINANCE

Section 252.25 recognizes that penalties may be imposed for both a violation of a communicable disease ordinance and, as well, for obstructing the execution of such an ordinance. This section of the ordinance will identify the circumstances under which a person will be found to be interfering with or obstructing an order from a local health officer made enforceable by the ordinance. Such circumstances must be clearly established in order to meet the fair notice and specificity requirements addressed by the *Palm* Court. Stated another way, people must reasonably know what conduct will lead to a violation of the ordinance and be subject to a penalty.

LEGISLATIVE BODY OVERSIGHT AND DURATION OF ORDERS

As indicated above, there are different ways that a local government may provide for legislative body (county board/city council/village board) oversight in relation to a health order applicable to the public at large containing a penalty (civil forfeiture) for noncompliance. The ordinance should specify the method of legislative body oversight relative to such orders, if legislative body oversight is desired. Likewise, if the local government desires a durational limitation associated with a health order's imposition of a penalty associated with noncompliance, the limitation must be expressed in the ordinance.

VIOLATIONS AND PENALTIES

A local government should consider adopting the uniform citation form set forth in Wis. Stat. § 66.0113. If that form is adopted, the statute specifies the information that must be contained in a citation. The penalty attaching to violation of an enforceable health order may thereafter be included in the schedule of cash deposits associated with ordinance violations in the section of the local government's code associated with the citation form.

As indicated above, isolation and quarantine orders and orders related to a specific or threatened outbreak are capable of enforcement under Wis. Admin Code § DHS 145.06, *et seq.*, pursuant to ordinance penalty provisions or both. In addition, there may exist an ability to impact certain licenses granted to a particular person or business within the jurisdiction in the event the person or business refuses to comply with the ordinance. Depending upon what a local government desires, care should be taken to identify the available remedies within the ordinance.

OTHER ISSUES

ENFORCING CONTACT TRACING

Another important aspect of limiting the spread of a communicable disease is contact tracing by local health departments. Essentially, health departments contact persons infected with a disease in an effort to determine where the person may have contracted the disease and, as well, where that person has been in terms of further spreading the disease. Importantly, a local health officer may order a person to comply with contact tracing efforts pursuant to Wis. Admin Code § DHS 145.06(4) (provided that the person is known or suspected as having or having been exposed to a communicable disease). Similar to the petition process involved with the enforcement of an outbreak order, a local health officer may petition a court of record to order such a person to comply with the contact tracing efforts if the person otherwise refuses.[80] As indicated above, local governments should consider confirming this process in their enforcement ordinance.

LOCAL HEALTH OFFICER CITATION AUTHORITY

Local governments may also wish to consider that local ordinances enacted pursuant to Wis. Stat. § 252.25 provide the local health officer and his or her designees citation authority. This way, local health officer orders may be enforced without putting additional strain on law enforcement resources except in circumstances that may require a law enforcement presence. This citation authority should be implemented similar to the process employed in communities that provide citation authority to a zoning officer. A decision in this regard should be made only after discussion with law enforcement and health department staff given the potential strain on resources associated with the enforcement effort.

HIPAA & PRIVACY ISSUES

Local health officers are also tasked with providing the public with adequate information related to the pandemic and the spread of communicable disease in their respective communities. However, the disclosure of testing information presents significant concerns under the Health Insurance Portability and Accountability Act (HIPAA). Local health departments typically constitute “covered entities” under HIPAA. As such, local health departments are prohibited from disclosing “protected health information” (PHI) except in certain limited circumstances. For

[80] See earlier sections for details on the petition process.

this reason, there is a great deal of uncertainty over what type of information can be disclosed to the public about positive tests.

Protected health information includes the obvious personal identifiers such as name, DOB, and social security number. However, guidance from the U.S. Department of Health and Human Services (HHS) provides that the term also includes any "information, including demographic data, that relates to:

1. the individual's past, present or future physical or mental health or condition,
2. the provision of health care to the individual, or
3. the past, present, or future payment for the provision of health care to the individual,

and that identifies the individual *or for which there is a reasonable basis to believe it can be used to identify the individual*" (emphasis added).[81]

HHS also provides that there are no restrictions on the use or disclosure of "de-identified health information."[82] "De-identified health information neither identifies nor provides a reasonable basis to identify an individual." HHS guidance provides that there are two ways to de-identify information:

1. by obtaining a formal determination by a qualified statistician; or
2. by removing specified identifiers of the individual and of the individual's relatives, household members, provided, however, that the removal is adequate only if the covered entity has no actual knowledge that the remaining information could be used to identify the individual.

Given this, the authority to release information comes down to whether the information can reasonably be used to identify a person that has tested positive for a communicable disease. This analysis will likely be different county by county simply based on demographics (*e.g.*, population size). For example, there is a much higher likelihood that "a 42-year-old Caucasian male resident of Hurley, WI" could be used to identify the subject person compared to "a 42 year old Caucasian male resident of Madison, WI."

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[81] *See also* 45 C.F.R. § 160.103.

[82] *See* 45 C.F.R. §§ 164.502(d)(2), 164.514(a) and (b).

Local health officers must also be careful when deciding whether to disclose a specific place of contact where a disease is believed to have been contracted. This again mostly comes down to whether that information could reasonably be used to identify the individual that tested positive. If not, then there does not appear to be a legal reason why that information could not be disclosed. However, there are of course other factors to consider in terms of maintaining cooperative relationships and compliance with local health officer orders and guidelines.

On the other hand, covered entities are permitted to disclose protected health information, such as a person being COVID-19 positive, under certain circumstances. For instance, a local health department may disclose protected health information if such disclosure "is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public" and the disclosure is made "to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat."[83] Indeed, HHS's Office for Civil Rights has provided that:

> A covered entity may disclose PHI to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat, which may include the target of the threat. For example, HIPAA permits a covered entity, consistent with applicable law and standards of ethical conduct, to disclose PHI about individuals who have tested positive for COVID-19 to fire department personnel, child welfare workers, mental health crisis services personnel, or others charged with protecting the health or safety of the public if the covered entity believes in good faith that the disclosure of the information is necessary to prevent or minimize the threat of imminent exposure to such personnel in the discharge of their duties.[84]

In practice, proper disclosure of this information is usually accomplished by providing such information to dispatch who then informs local law enforcement when law enforcement is responding to a call. In addition to the guidance above, HIPAA permits notification to dispatch under 45 C.F.R. 164.512(j). The dispatch center, in turn, may then inform law enforcement, first responders, and other public safety workers if there has been a positive test result at an address where they are making a contact for a legitimate purpose related to public safety. In general, only the addresses of individuals who have tested positive may be disclosed and not any other

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[83] *See* 45 C.F.R. 164.512(j)(1).
[84] 45 CFR 164.512(j)(1).

personally identifying information unless necessary in unusual circumstances where an address would not suffice to protect first responders.

Furthermore, local health officers may likely disclose positive test results to businesses and schools in order to limit the exposure of others to the disease and otherwise mitigate the potential for spread of the disease. PHI may be shared with "persons at risk" of contracting or spreading a disease or condition so long as state law authorizes a covered entity to notify such persons in order to prevent or control the spread of the disease or otherwise to carry out public health interventions or investigations.[85] Such disclosures are permissible under Wisconsin law because of a local health officer's power to take all measures reasonable and necessary to limit the spread of disease.[86]

However, privacy laws require that any use or disclosure of protected health information be kept to the minimum amount reasonably necessary to accomplish the permissible use or disclosure's purposes. For example, guidance from federal agencies contemplate that disclosures relating to communicable disease be made to dispatch centers and then from the dispatch center on a per-call basis to first responders actually making contact pursuant to a dispatch call. Finally, any person receiving protected health information relating to a positive test must only use this information to take necessary precautions (*e.g.*, donning appropriate PPE) and must not re-disclose the information for any other purpose.

[85] 45 CFR 164.512(b)(1)(iv).
[86] Wis. Stat. §§ 252.03(1) and (2)) and the special disease control measures authorized by Wis. Admin. Code § DHS 145.07 (permitting schools and day care centers to send home pupils suspected of having a communicable disease, prohibiting food handlers from handing food while infected with a communicable disease, etc.)

APPENDICES

- **APPENDIX A:** COMMUNICABLE DISEASE CONFIDENTIALITY AGREEMENT
- **APPENDIX B:** NOTIFICATION OF RELEASE FROM ISOLATION
- **APPENDIX C:** ADMINISTRATIVE DIRECTIVE FOR ISOLATION
- **APPENDIX D:** NOTICE OF RIGHTS OF ISOLATION OR QUARANTINE
- **APPENDIX E:** PETITION FOR COURT ORDERED ISOLATION OR QUARANTINE
- **APPENDIX F:** COURT ORDER FOR ISOLATION OR QUARANTINE
- **APPENDIX G:** ISOLATION/QUARANTINE PLACARD
- **APPENDIX H:** ADMINISTRATIVE DIRECTIVE FOR [*e.g.*, CLOSURE/CONTACT TRACING/MEDICAL EVALUATION]
- **APPENDIX I:** NOTICE OF RIGHTS OF ADMINISTRATIVE DIRECTIVE
- **APPENDIX J:** PETITION FOR COURT ORDERED [INSERT ACTION]
- **APPENDIX K:** COURT ORDER FOR [INSERT ACTION]

APPENDIX A

COMMUNICABLE DISEASE CONFIDENTIALITY AGREEMENT

_____ County Public Health Department at _____, WI _____ ("County") and _____ ("Recipient") (collectively "Parties"; individually, "Party") hereby enter into this Communicable Disease Confidentiality Agreement ("Agreement") with the effective date of _____ __, 2020 ("Effective Date").

1. The County may possess personally identifiable health information ("PHI") that is protected under HIPAA and other applicable laws (i.e. Wis. Stat. §§ 146.815 and 146.82) and is permitted to use or disclose such information only in accordance with such laws and regulations.
2. The County is responsible to respond to disease outbreaks to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; to investigate the outbreak to determine the source and who may be at risk of contracting a disease; to manage infected and potentially infected persons by enforcing isolation and quarantine policies; and to provide treatment and vaccination to people at risk ("Activities").
3. The County may use and/or disclose PHI to Recipient in performance of Activities. Parties desire and agree to take all necessary steps to ensure all PHI is safe and secure in accordance with applicable laws and regulations.
4. The County will only use and/or disclose the minimum necessary amount of PHI to Recipient for the purposes of accomplishing the Activities.
5. The Recipient shall only use and/or disclose PHI obtained from the County in connection with Activities. The Recipient shall implement safeguards to limit who has access, use, and/or the ability to disclose PHI. The Recipient shall not use and/or disclose PHI in any manner that may violate applicable laws and regulations.
6. The Recipient shall report to the County within 24 hours of the Recipient becoming aware of any use and/or disclosure in violation of this Agreement or applicable laws or regulations.
7. The primary agent for the Recipient who is responsible to receive PHI from County is _____. The secondary agent for the Recipient is _____. These agents are responsible for the receipt, preparation, management, and storage of PHI.
8. This Agreement shall be effective as of the Effective Date and shall continue until this Agreement is terminated pursuant to the terms of this Agreement.
9. The County reserves the right to inspect the facilities, systems, books, and records of the Recipient to monitor compliance or if the County suspects a breach of this Agreement.
10. The County may terminate this Agreement with written notice for any reason and at any time. Upon termination of this Agreement, the Recipient shall return or destroy all PHI.
11. Neither Party may assign and/or delegate any rights and/or obligations under this Agreement.
12. Recipient shall indemnify, hold harmless, and defend the County, its agents, and its employees from and against any and all claims, losses, liabilities, costs, and other expenses resulting from, or relating to, the acts or omissions of Recipient and/or the negligence of the County that are associated with the representations, duties and obligations under this Agreement. Nothing contained in this Agreement is intended to be a waiver or estoppel of any limitations, defenses, or immunities available at law. The Parties' respective rights and obligations shall survive termination of the Agreement.
13. This Agreement is the entire agreement of the parties and supersedes any other agreements, negotiations, or understandings between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereto understand and agree to the provisions within this Agreement. The undersigned hereby represents the full authority to bind the entity on behalf of whom the signature is provided.

COUNTY:	RECIPIENT:
_____	_____
Signature	Signature
_____	_____
Name and Title (Printed)	Name and Title (Printed)
_____	_____
Date	Date

APPENDIX B

NOTIFICATION OF RELEASE FROM ISOLATION

CASE NO: _____

The _____ County Health Department has determined the person named below is no longer communicable (contagious) with COVID-19, and therefore the following person

NAME: _____

ADDRESS: _____

who was issued an Administrative Directive for Isolation Order by the Department on _____, is no longer considered a public health risk. I am releasing you from isolation effective immediately.

Please follow up with your health care provider if you have any further health care needs.

Please call the _____ County Health Department at _____ with any questions.

Release Date: _____

_____ _____

Signature of LHO Date

APPENDIX C

ADMINISTRATIVE DIRECTIVE FOR ISOLATION

CASE NO: _____

The _____ County Health Department (Department has issued this order because the person named below has been diagnosed with Novel Coronavirus Disease (COVID-19), via a lab confirmed positive test. COVID-19 is a disease which is spread from person to person and if COVID-19 spreads in the community, it will have severe public health consequences. Therefore, the Department has determined that it is necessary to isolate you to your home, to prevent further spread of the disease.

Pursuant to Wis. Stat. § 252, Wis. Admin. Code Chapter DHS 145, and _____ County Code of Ordinances, Chapter ___, Article ___ (see attached), the local health officer of _____ County **HEREBY ORDERS** that the following person shall be isolated under the conditions specified in this order.

NAME: _____

ADDRESS: _____

1. **Terms of Confinement.** You are ordered to remain at _____ from _____ until the Department determines that you are no longer communicable (contagious) and are released from isolation.

2. **Requirements during Confinement** (During the period of isolation):
   a. You must not leave your home at any time unless you have received prior written authorization from the Department to do so.
   b. You must not come into contact with anyone except the following persons:
      1. Authorized healthcare providers and other staff that may need to enter your home;
      2. Authorized Department staff or other persons acting on behalf of the Department; and
      3. Such other persons as authorized by the Department.
   c. If you have unmet daily needs, including food, shelter, or medical care, during the period of isolation, contact the Department.
   d. In order to ensure that you strictly comply with this Isolation Order, the Department or persons authorized by the Department, will monitor you. If you prove not to comply with this order, a quarantine officer may be placed at your home until your isolation order has ended.
   e. If you fail to comply with this Order, you may be subject to: 1) a citation; 2) an order to isolate in a more restrictive facility, or 3) any other relief available by law.

_____
Issuance Date

APPENDIX D

NOTICE OF RIGHTS OF ISOLATION OR QUARANTINE

TO: John B. Doe
DOB: 08-07-1990

INSTRUCTIONS: *Completion of this form is voluntary. If not completed, it will be witnessed that you were informed and given appropriate copies as stated below. This form is maintained in the patient's record and is accessible to authorized users.*

Pursuant to s. DHS 145.06(5), Wis. Admin Code, _____, local health officer for _____ County, does hereby issue upon you an Administrative Directive of isolation or quarantine. You are noticed that you have the following rights:

1. The opportunity to seek counsel;

2. The right to appear at a hearing in the event that you do not comply with the Administrative Directive and the local health officer petitions the court for court enforcement of the local health officer's order.

3. At such a hearing you have the right to appear; the right to present evidence and cross-examine witnesses.

4. You are further noticed that unless good cause is shown, a hearing held for the purpose of obtaining a court order to enforce the directive may be conducted by telephone or by live-audiovisual means, if available. You may appear by telephone or live audiovisual means, if available.

ACKNOWLEDGMENT: *I acknowledge with my signature below that the above rights were presented to me, read to me and I received a copy of the Administrative Directive of the local health officer and a copy of this NOTICE OF RIGHTS OF ISOLATION OR QUARANTINE.*

Subject:_____

Dated: _____

Witness: _____

Time and Date of Service: _____

APPENDIX E

PETITION FOR COURT ORDERED ISOLATION OR QUARANTINE

STATE OF WISCONSIN	CIRCIUIT COURT	_____ COUNTY

IN THE MATTER OF THE
ISOLATION/ QUARANTINE OF:
John B. Doe
D.O.B.: 08-07-1990
100 Ivory Tower

Petition for Court Order to Enforce
Isolation/ Quarantine Directive
Pursuant to Wis. Admin. Code,
s. DHS 145.06(5)
Case No. _____
Code No. _____

STATE OF WISCONSIN)
COUNTY OF _____)

Pursuant to s. DHS 145.06(5), Wis. Admin Code, _____, local health officer for _____ County, does hereby petition the court for an order to enforce an Administrative Directive for isolation or quarantine issued upon John Doe pursuant to s. DHS 145.06. Said petition is based upon:

I am the local health officer for _____ County authorized to issue directives of isolation or quarantines pursuant to s. DHS 145.06(4), Wis. Admin. Code.

On [Current Date], acting as local health officer, I did issue and serve upon John B. Doe a directive for isolation to home. A true and accurate copy of said directive is attached hereto and incorporated herein.

The directive was based upon medical verification that John B. Doe has the communicable disease of the mumps. Said medical verification consists of:

[List of medical condition/symptoms]

John B. Doe has failed to comply with directive. I did observe John B. Doe at the [Name of Location City, Wisconsin], eating a snack. Given the medical verification, John B. Doe presents an imminent and substantial threat to himself and to the public unless he is confined to isolation by court order.

John B. Doe received a notice of rights when he was served with the local health officer directive of isolation. Said notice informed John B. Doe of his right to counsel and right to a hearing. A true and accurate copy of said notice is attached hereto and incorporated herein.

All reasonable means of treating John Doe for the present communicable disease of mumps has been exhausted and there exist no less restrictive alternative to isolation.

Court ordered isolation at the _____ *[Insert Name of Health Care Facility*] or like facility is the least restrictive alternative means of treating John Doe for the present communicable disease of mumps.

Dated this _____ date of _____, 2020

_____

Public Health Administrator /Local Health Officer
_____ County

Subscribed and sworn to me this _____ date of _____, 2020.

_____
Notary Public, State of Wisconsin, County of _____
My Commission is permanent/expires _____.

APPENDIX F

COURT ORDER FOR ISOLATION OR QUARANTINE

STATE OF WISCONSIN CIRCIUIT COURT _____ COUNTY

IN THE MATTER OF THE
ISOLATION/QUARANTINE OF:
John B. Doe

D.O.B.: _____

Order For Temporary
Confinement Pending Hearing
Case No. _____
Code No. _____

The court having reviewed the Petition of _____, for a court order to enforce an Administrative Directive, for isolation or quarantine, pursuant to s. DHS 145.06(5), Wis. Admin Code:

IT IS HEREBY ORDERED:

1. John B. Doe is temporarily confined for purposes of isolation pending a hearing held within 72 hours, excluding Saturdays, Sundays and legal holidays, of arrival at the facility.

2. It is ordered that [the _____ County Sheriff's Department/Local Health Officer/other entity] shall detain and transport John B. Doe to the [Name of Medical Facility, City], Wisconsin, or like facility. [Review with law enforcement, Local Health Officer and administration the process for establishing custody and responsibility for any charges associated with custody.]

3. Copies of this Order, the Petition for Court Order to Enforce an Administrative Directive for Isolation /Quarantine, and its attachments, shall be served upon John B. Doe when detaining him.

4. The [Name of Medical Center] or like facility shall be the facility that receives John B. Doe.

5. During the period of confinement, the following entity shall provide 24/7 security of John B. Doe. (Sheriff's Office/Local Law Enforcement/Law Enforcement having jurisdiction over place of confinement)

6. The _____ County Public Health Department shall give the individual written notice at least 48 hours before a scheduled hearing is to be held. Written notice of hearing shall include all of the following:

    a. The date, time, and location of the hearing;
    b. The grounds, and underlying facts, upon which confinement of the individual is sought;
    c. An explanation of the rights of the individual, as attached to the petition; and
    d. The proposed actions to be taken and the reasons for each action, including the least restrictive environment of any proposed continued isolation/quarantine.

7. Unless good cause is shown, a hearing on the petition may be conducted by telephone or live audio-visual means, if the latter is available.

8. John B. Doe shall be charged for any and all expenses for the necessary medical care, food and other articles needed for the care of John B. Doe during periods of court ordered confinement.

9. John B. Doe or his insurance carrier may be liable to _____ County for reimbursement of those costs incurred for employing guards; maintaining quarantine and enforcing isolation of the quarantined area; and conducting examinations and tests for disease carriers made under the direction of the Local Health Officer.

Dated this day of _____, 2020.

BY THE COURT:

_____
Name/Title of Judge

APPENDIX G

ISOLATION/QUARANTINE PLACARD

Under the order of the _____ County Health Department

WARNING
ISOLATION / QUARANTINE ORDER IN EFFECT

Do not enter unless you have permission from the _____ County Health Department

Telephone Number _____

All persons entering shall comply with infection control procedures.

_____ _____

_____, Local Health Officer Date

_____ County Health Department

APPENDIX H

ADMINISTRATIVE DIRECTIVE FOR [*e.g.*, CLOSURE/CONTACT TRACING/MEDICAL EVALUATION]

CASE NO: _____

The _____ County Health Department (Department) has issued this order because the [person/group/business] named below has [been diagnosed with _____ Disease, via a lab confirmed positive test]/[, after investigation and evaluation by the County Health Department, been determined to be a source of outbreak and spreading of _____ Disease ("Outbreak")]. _____ is a disease which is spread from person to person and if _____ spreads in the community, it will have severe public health consequences. Therefore, the Department has determined that it is necessary to [INSERT ACTION] to prevent further spread of the disease.

Pursuant to Wis. Stat. § 252.03, Wis. Admin. Code Chapter DHS 145, and _____ County Code of Ordinances, Chapter ___, Article ___ (see attached), the Local Health Officer of _____ County **HEREBY ORDERS** that the following [person/group/business] shall [INSERT ACTION] pursuant to the conditions specified in this order.

Name: _____

Address: _____

Terms. You are ordered to [INSERT ACTION] from _____ until the Department determines that [you/your business] are no longer the source of an Outbreak and may resume normal activities ("Effective Period").

Requirements during the Effective Period:

1. [INSERT CONDITIONS/REQUIREMENTS].
2. [INSERT CONDITIONS/REQUIREMENTS].
3. In order to ensure that you strictly comply with this Order, the Department or persons authorized by the Department, will monitor you. If you prove not to comply with this order, additional enforcement actions by the Department may be taken, including, without limitation, petitioning a court of record.

If you fail to comply with this Order, you may be subject to: 1) a citation; 2) an order to [describe potential remedy] in a proceeding under Wis. Admin. Code Chapter DHS 145 or 3) any other relief available by law.

_____
Issuance Date

APPENDIX I

NOTICE OF RIGHTS OF ADMINISTRATIVE DIRECTIVE

TO: John B. Doe
DOB: 08-07-1990

INSTRUCTIONS: *Completion of this form is voluntary. If not completed, it will be witnessed that you were informed and given appropriate copies as stated below. This form is maintained in the patient's record and is accessible to authorized users.*

Pursuant to s. DHS 145.06(5), Wis. Admin Code, _____, Local Health Officer for _____ County, does hereby issue upon you an Administrative Directive of [INSERT ACTION]. You are noticed that you have the following rights:

1. The opportunity to seek counsel;

2. The right to appear at a hearing in the event that you do not comply with the Administrative Directive and the Local Health Officer petitions the court for court enforcement of the Local Health Officer's order.

3. In the event of such hearing, you have the right to your own counsel.

4. At such a hearing you have the right to appear, the right to present evidence, and the right to cross-examine witnesses.

5. You are further noticed that unless good cause is shown, a hearing held for the purpose of obtaining a court order to enforce the administrative directive may be conducted by telephone or by live-audiovisual means, if available. You may appear by telephone or live audiovisual means, if available.

ACKNOWLEDGMENT: *I acknowledge with my signature below that the above rights were presented to me, read to me and I received a copy of the Administrative Directive of the Local Health Officer and a copy of this NOTICE OF RIGHTS OF ADMINISTRATIVE DIRECTIVE.*

Subject:_____

Dated: _____

Witness: _____

Time and Date of Service: _____

APPENDIX J

PETITION FOR COURT ORDERED [INSERT ACTION]

STATE OF WISCONSIN	CIRCIUIT COURT	_____ COUNTY

IN THE MATTER OF THE
[INSERT ACTION] OF:
John B. Doe
D.O.B.: 08-07-1990
100 Ivory Tower

Petition for Court Order to Enforce
Administrative Directive
Pursuant to Wis. Admin. Code,
s. DHS 145.06(5)
Case No. _____
Code No. _____

STATE OF WISCONSIN)
COUNTY OF _____)

Pursuant to s. DHS 145.06(5), Wis. Admin Code, _____, Local Health Officer for _____ County, does hereby petition the court for an order to enforce an Administrative Directive for [INSERT ACTION] issued upon John Doe pursuant to s. DHS 145.06. Said petition is based upon:

I am the Local Health Officer for _____ County authorized to issue directives of [describe] pursuant to s. DHS 145.06(4), Wis. Admin. Code.

On [Current Date], acting as Local Health Officer, I did issue and serve upon John B. Doe a directive for [INSERT ACTION]. A true and accurate copy of said directive is attached hereto and incorporated herein.

The directive was based upon [INSERT EVIDENCE]. Said [medical/investigative] verification consists of:

[List of medical condition/symptoms]

John B. Doe has failed to comply with directive. I did observe John B. Doe [conduct]. Given the [medical/investigative] verification, John B. Doe presents an imminent and substantial threat to himself and to the public unless [INSERT ORDERED ACTION].

John B. Doe received a notice of rights when he was served with the Local Health Officer Administrative Directive. Said notice informed John B. Doe of his right to counsel and right to a hearing. A true and accurate copy of said notice is attached hereto and incorporated herein.

Court ordered [INSERT ACTION] is the least restrictive alternative means of [treating John Doe for /limiting the spread of] the communicable disease.

Dated this _____ date of _____, 2020

_____

Public Health Administrator /Local Health Officer
_____ County

Subscribed and sworn to me this _____ date of _____, 2020.

_____

Notary Public, State of Wisconsin, County of _____
My Commission is permanent/expires _____.

APPENDIX K

COURT ORDER FOR [INSERT ACTION]

STATE OF WISCONSIN CIRCIUIT COURT _____ COUNTY

IN THE MATTER OF THE
[INSERT ACTION]:
John B. Doe

D.O.B.: _____

Order For [INSERT ACTION]

Case No. _____
Code No. _____

The court having reviewed the Petition of _____, for a court order to enforce an Administrative Directive, for [INSERT ACTION], pursuant to s. DHS 145.06(5), Wis. Admin Code:

IT IS HEREBY ORDERED:

1. John B. Doe is ordered to [INSERT ACTION].

2. It is further ordered that [the _____ County Sheriff's Department/Local Health Officer/other entity] shall [INSERT ACTION].

3. Copies of this Order, the Petition for Court Order to Enforce an Administrative Directive for [INSERT ACTION], and its attachments, shall be served upon John B. Doe [INSERT ENFORCEMENT ACTION].

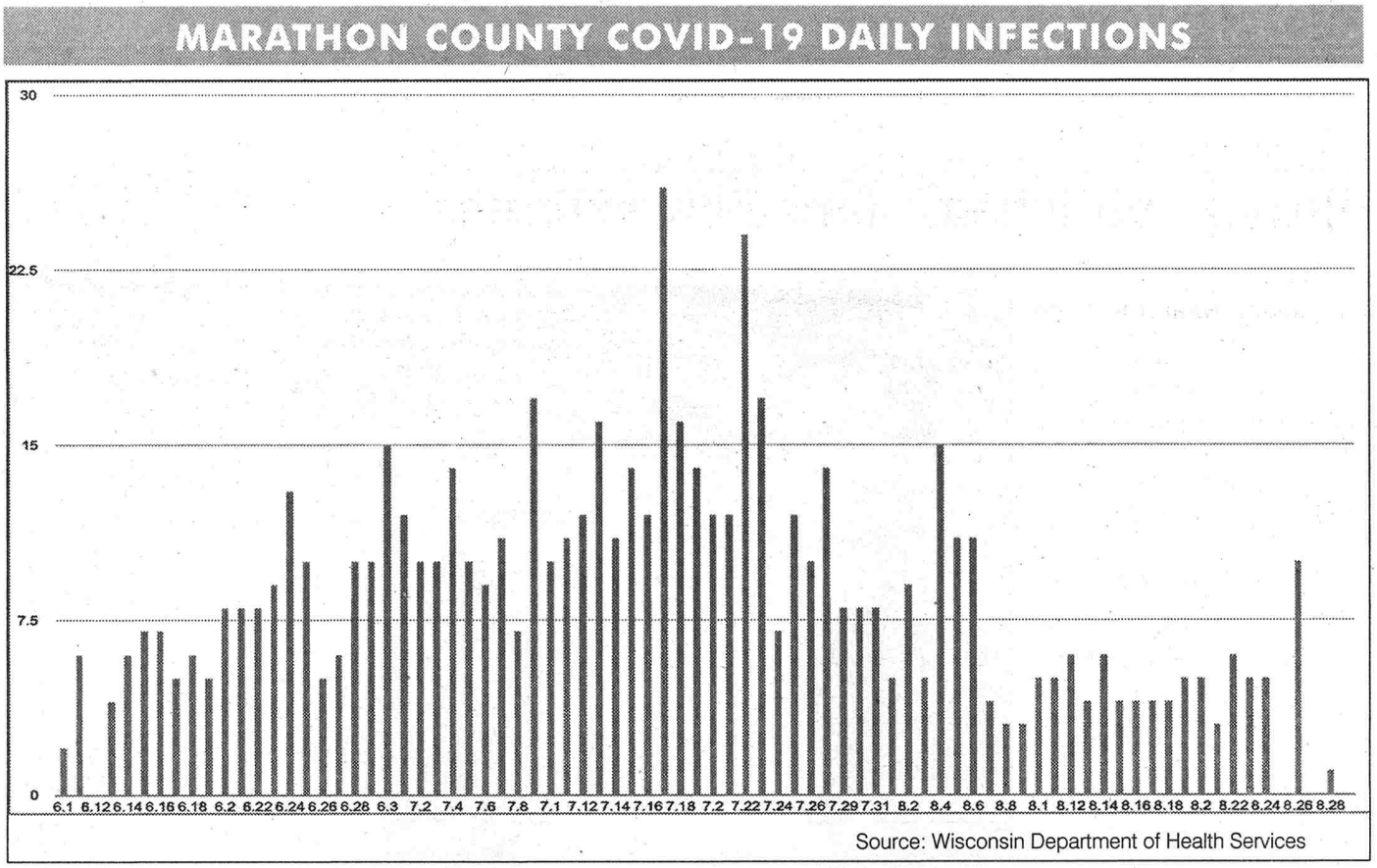
4. Unless good cause is shown, a hearing on the petition may be conducted by telephone or live audio-visual means, if the latter is available.

Dated this ____ day of _____, 2020.

BY THE COURT:

_____
Name/Title of Judge

22 E. Mifflin St., Suite 900
Madison, Wisconsin 53590
608.663.7188
www.wicounties.org



Daily coronavirus cases plummet during August

Marathon County has seen a dramatic decrease in daily COVID-19 infections, but the county health department is not ready yet to credit the decline to people wearing face masks.

According to the department, the number of active COVID-19 cases in the county has plummeted from 183 on July 30 to 84 as of Tuesday.

The state Department of Health Services (DHS) reports daily infections in Marathon County have dropped from eight on July 30 to four as of Friday (the last recorded data).

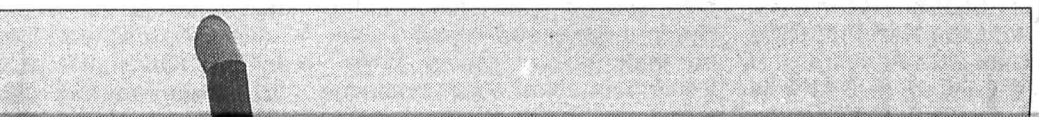
Melissa Moore, acting public information officer for Marathon County, said her department supports wearing masks, as well as avoiding mass gatherings and hand washing, to slow the spread of COVID-19, but that it is "too early" to say what is causing a definite drop in infections.

Moore's statement repeats remarks made by DHS Secretary Andrea Palm on Aug. 21 in a routine COVID-19 media briefing.

"Masks work and the research says they work but it's a bit too early to say anything definitively," she said. "We expect masks to have a favorable impact on our case numbers moving forward."

COVID-19 cases are trending lower not only across Wisconsin where there is an official mask order, but, according to the federal Center for Disease Control, across the United States, where states have all kinds of coronavirus policies in place.

Gov. Tony Evers announced a face mask mandate for indoor public spaces effective July 30 as an emergency executive order.



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