

**Re: Comments on Proposed Rule Docket No. CDC-2016-0068, RIN 0920-AA63
Control of Communicable Diseases Federal Register, Volume 81 Issue 157 (Monday,
August 15, 2016)**

Dear Director Thomas R. Frieden,

The Association of American Physicians & Surgeons (“AAPS”) is a non-profit membership organization of physicians and surgeons who are mostly in small, independent practices. Founded in 1943, AAPS defends and promotes the practice of private, ethical medicine. AAPS has members in virtually every specialty and State, and AAPS speaks out frequently about issues concerning patients and medical practice. HHS favorably cited a comment by AAPS in connection with the landmark Privacy Rule. 65 FR 82462, 82468 (Dec. 28, 2000). Our legal filings have also been cited favorably by the U.S. Supreme Court and appellate state and federal courts.

AAPS strongly objects to how the proposed rule CDC-2016-0068 (the “Proposed Rule”) would vastly and unwisely increase the authority of the Centers for Disease Control and Prevention (CDC) to address problems that would be better resolved through existing laws and regulations. Specifically, AAPS objects to the CDC’s attempt to assume power to detain an individual for 72 hours and longer without any federal court order, and the CDC’s proposed increase in penalties. AAPS also opposes the proposal that the CDC vastly expand its electronic monitoring of personal information, under the guise of protecting the public against rare, isolated outbreaks of disease. Finally, AAPS strongly objects to the coercive imposition of treatment, including vaccination, without the genuine consent of the patient.

AAPS objects to a 72-hour or more “apprehension”

The Proposed Rule is vaguely worded but seems to assert a new power by the CDC to apprehend, detain, and isolate individuals for 72 hours and even longer, without any specific limitation, and without the authority of a court order. This is both unjustified and contrary to constitutional rights. The CDC does not assert any valid basis, in law or public policy, for it to seek this authority on its own to detain individuals without review and authorization by a court.

The Fourth Amendment requires a search warrant, signed by an independent judge or comparable authority, before government can search an individual’s home. Nothing less should be allowed to seize and detain an individual himself. If there is a compelling urgency to quarantine an individual, then a court is available to grant that authority on short notice. If there is not a compelling urgency, then the CDC should not be taking that power for itself and violating constitutional rights without court authorization.

AAPS objects to the proposed penalties

There is no justification for the proposed enormous increase in penalties for violation of a quarantine. Penalties need not be increased to \$100,000 for a harmless violation and \$500,000 for a violation that causes death. There has not been any widespread defiance of the government on this matter, so there is no reasonable factual basis for increasing the penalties to deter wrongful conduct.

In times of a public health crisis, individuals suffering from disease should not be put under fear of draconian penalties in addition to the stress of a physical infirmity. The lower statutory penalty of not more than \$1,000 or a year in jail, or both, for violation of quarantine laws has been more than adequate punishment for any violations. *See* 42 U.S.C. § 271. The proposed increase in that fine by 100 to 500 times is unwise and unjustified.

AAPS objects to the CDC's attempt to vastly expand its electronic monitoring

The Proposed Rule defines electronic monitoring far too broadly:

Electronic or Internet-based monitoring means mechanisms or technologies allowing for the temporary public health supervision of an individual under conditional release and may include electronic mail, SMS texts, video conference or webcam technologies, integrated voice-response systems, entry of information into a web-based forum, wearable tracking technologies, and other mechanisms or technologies as determined by the Director or supervising health authority.

81 FR 54230, 54313. This is far too broad than what is necessary for surveillance, to the extent its ambiguous language implies a power to monitor one's personal electronic communications. Diseases are not transmitted over the internet or by email. The Proposed Rule should be clarified to make clear that the CDC is not asserting any authority to conduct surveillance of individuals' personal email and analogous electronic technologies.

AAPS objects to coercive treatment, including vaccination, without the genuine consent of the patient

The Proposed Rule suggests an authority for the CDC to impose coercive treatments, including vaccination, without the genuine consent of the patient:

HHS/CDC is proposing a definition for "agreement" which refers to an agreement entered into between the CDC and an individual expressing agreement between the parties that the individual will observe public health measures authorized under this part, as the CDC considers reasonably necessary to protect the public's health, including quarantine, isolation, conditional release, medical examination, hospitalization, vaccination, and treatment. ...

81 FR 54230, 54237. While styled as an “agreement”, there is an implication that the power of government may be used to coerce or impose treatments without the genuine consent of the patient. Such governmental power has not been justified, and probably would never be justifiable in real-world scenarios. The Proposed Rule should not include authority to coerce treatments, including vaccination, without the genuine consent of the patient.

Conclusion

For the foregoing reasons, the Proposed Rule should be withdrawn.

Dated: October 14, 2016

/s/ Andrew L. Schlafly

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