

CHAPTER 23-07.6

COMMUNICABLE DISEASE CONFINEMENT PROCEDURE

23-07.6-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.
2. "Confinement" means quarantine or isolation.
3. "Isolation" means the physical separation and restrictions on movement or travel of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from nonisolated individuals, to prevent or limit the transmission of the disease to nonisolated individuals.
4. "Local board" means a board of health as defined under section 23-35-01.
5. "Local health officer" means the health officer of a local board.
6. "Quarantine" means the physical separation and restrictions on movement or travel of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from nonquarantined individuals to prevent or limit the transmission of the disease to nonquarantined individuals.
7. "Respondent" means the person or group of persons ordered to be confined or restricted under this chapter.

23-07.6-02. Confinement order - Penalty.

1. The state health officer or any local health officer may order any person or group into confinement by a written directive if there are reasonable grounds to believe that the person or group is infected with any communicable disease, the state health officer or local health officer determines that the person or group poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health.
2. Conditions and principles. The state or local health officer shall adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:
 - a. Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others and may include confinement to private homes or other private and public premises.
 - b. Isolated individuals must be confined separately from quarantined individuals.
 - c. The health status of isolated and quarantined individuals must be monitored regularly to determine if they require isolation or quarantine.
 - d. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease the individual must promptly be removed to isolation.
 - e. Isolated and quarantined individuals must be immediately released when they pose no substantial risk of transmitting a contagious or possibly contagious disease to others.
 - f. The needs of persons isolated and quarantined must be addressed in a systematic and competent fashion, including providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care.
 - g. Premises used for isolation and quarantine must be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harm to persons isolated and quarantined.
 - h. To the extent possible, cultural and religious beliefs must be considered in addressing the needs of individuals and establishing and maintaining isolation and quarantine premises.

3. Cooperation. Persons subject to isolation or quarantine shall obey the health officer's rules and orders and must not go beyond the isolation or quarantine premises. Failure to obey these provisions is a class B misdemeanor.
4. Entry into isolation or quarantine premises.
 - a. Authorized entry. The state or local health officer may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.
 - b. Unauthorized entry. A person, other than a person authorized by the state or local health officer, must not enter isolation or quarantine premises. Failure to obey this provision is a class B misdemeanor.
 - c. Potential isolation or quarantine. A person entering an isolation or quarantine premises with or without authorization of the state or local health officer may be isolated or quarantined pursuant to subsection 1.
5. This section does not authorize the state health officer or a local public health officer to commandeer, in whole or in part, any hospital or other medical facility.

23-07.6-03. Procedures for isolation and quarantine.

The isolation and quarantine of an individual or groups of individuals shall be undertaken in accordance with the following procedures:

1. Temporary isolation and quarantine without notice.
 - a. Authorization. The state or a local health officer, within that officer's jurisdiction, may temporarily isolate or quarantine an individual or groups of individuals through a written directive if delay in imposing the isolation or quarantine would significantly jeopardize the health officer's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.
 - b. Content of directive. The written directive must specify the identity of the individual or groups of individuals subject to isolation or quarantine, including identification by characteristics if actual identification is impossible or impracticable; the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; the suspected contagious disease if known; and decontamination, treatment, or prevention measures that must be followed. The directive must be accompanied by a copy of this chapter and relevant definitions.
 - c. Copies. A copy of the written directive must be given to the individual to be isolated or quarantined or, if the order applies to a group of individuals and it is impractical to provide individual copies, it may be posted in a conspicuous place in the isolation or quarantine premises. The state or local health officer may also use any available mass media, including broadcasting, to provide notice and information about the written directive.
 - d. Petition for continued isolation or quarantine. Within ten days after issuing the written directive, the state or local health officer shall file a petition under subsection 2 for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals.
2. Isolation or quarantine with notice.
 - a. Authorization. The state or a local health officer may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.
 - b. Content of petition. A petition under subdivision a must specify the identity of the individual or groups of individuals subject to isolation or quarantine, including identification by characteristics if actual identification is impossible or impractical; the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; the suspected contagious disease if known; recommended decontamination, treatment, or preventative measures for the suspected contagious disease; a statement of compliance with the conditions and principles authorizing isolation and quarantine under this chapter; and a statement of the basis upon which isolation or quarantine is justified in

compliance with this chapter. The petition must be accompanied by the sworn affidavit of the state or local health officer attesting to the facts asserted in the petition, with any further information that may be relevant and material to the court's consideration.

- c. Notice. Notice to the individuals or groups of individuals identified in the petition must be accomplished within twenty-four hours in accordance with the North Dakota Rules of Civil Procedure. The notice must include a statement that the respondent has the right to counsel, including counsel provided at public expense if indigent and must include a copy of this chapter.

23-07.6-04. Place of confinement. (Effective through August 31, 2022)

A respondent must be confined in a place designated in the written directive until the health officer who issued the written directive determines that the respondent no longer poses a substantial threat to the public health or until a court of competent jurisdiction orders the release of the respondent. The state department of health or the local board may establish and maintain places of confinement.

Place of confinement. (Effective after August 31, 2022)

A respondent must be confined in a place designated in the written directive until the health officer who issued the written directive determines that the respondent no longer poses a substantial threat to the public health or until a court of competent jurisdiction orders the release of the respondent. The department of health and human services or the local board may establish and maintain places of confinement.

23-07.6-05. Court hearing.

A hearing must be held on a petition filed under subsection 2 of section 23-07.6-03 within five days of filing the petition. For a good cause shown, the court may continue the hearing for up to ten days. A respondent has the right to a court hearing in the district court serving the county in which the respondent resides. A record of the proceedings pursuant to this section must be made and retained. If parties cannot personally appear before the court due to risks of contamination or the spread of disease, proceedings may be conducted by their authorized representatives and be held via any means that allows all parties to fully participate. The respondent has a right to counsel and if the respondent is indigent, the respondent has the right to have counsel provided at public expense. The respondent, respondent's representative, or respondent's counsel has the right to cross-examine witnesses testifying at the hearing. A petition for a hearing does not stay a written directive ordering confinement. The court shall determine by a preponderance of the evidence if the respondent is infected with a communicable disease, if the respondent poses a substantial threat to the public health, and if confinement is necessary and is the least restrictive alternative to protect or preserve the public health. The court shall also determine whether to order the respondent to follow the state or local health officer's directive for decontamination, treatment, or preventative measures if the petition is granted. If the written directive was issued by a local health officer, the state health officer has the right to be made a party to the proceedings.

23-07.6-06. Notice of hearing.

Notice of the hearing must be given to the respondent and must inform the respondent of the respondent's right to counsel or counsel at public expense under this chapter and must include a copy of this chapter.

23-07.6-07. Access to records.

Before a hearing conducted under this chapter, the respondent, respondent's representative, or respondent's counsel, and the attorney for the state or local health officer must be afforded access to all records including hospital records if the respondent is hospitalized. If the respondent is hospitalized at the time of the hearing, the hospital shall make available at the hearing for use by the respondent, respondent's representative, respondent's

counsel, and the attorney for the state or local health officer all records in its possession relating to the conditions of the respondent.

23-07.6-08. Burden of proof.

At a hearing conducted under this chapter, the health officer who ordered confinement has the burden of showing by a preponderance of the evidence that the respondent is infected with a communicable disease, poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health.

23-07.6-09. Court findings and orders.

If the court finds by a preponderance of the evidence that the respondent is infected with a communicable disease, poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health, the court may order the continued confinement of the respondent under any conditions and restrictions the court determines appropriate for decontamination, treatment, or prevention, including remand to the health officer that petitioned the court or issued the original directive, until the health officer that issued the original written directive for confinement determines that the respondent's release would not constitute a substantial threat to the public health, or may order the release of the respondent under any conditions and restrictions the court determines appropriate to protect the public health. If the court fails to find that the conditions required for an order for confinement have been proven, the court shall order the immediate release of the respondent.

23-07.6-10. Request to terminate or modify an order - Review of confinement orders.

A respondent may, at any time, request the court to terminate or modify an order of the court, in which case a hearing must be held in accordance with this chapter. Upon its own motion, the court may conduct a hearing to determine if the conditions requiring the confinement or restriction of the respondent continue to exist. Notice of at least five days, but no more than ten business days, must be provided to all parties to the hearing under this section. If the court, at a hearing held upon motion of the respondent or its own motion, finds that the conditions requiring confinement or restriction no longer exist, the court shall order the immediate release of the respondent. If the court finds that the conditions continue to exist but that a different remedy is appropriate under this chapter, the court may modify its order accordingly.

23-07.6-11. Closed hearing - Confidentiality of information.

At the request of the respondent, a hearing conducted under this chapter must be closed and any report, transcript, record, or other information relating to actions taken under this chapter must be kept confidential. Deidentified information may be released to the public under chapter 23-01.3.

23-07.6-12. Right of appeal.

Any party aggrieved by an order of the district court under this section may appeal to the supreme court. An order of confinement continues in effect while the matter is on appeal.