



## TRAVEL, QUARANTINE, AND SANITATION ORDERS

On March 26, 2020, Governor Doug Burgum issued Executive Order 2020-14, which suspends most of North Dakota Century Code Chapter 23-07.6 ([Appendix A](#)). Chapter 23-07.6 authorizes the state health officer and local health officers to issue confinement orders for persons who pose a substantial threat to the public health and provides a hearing process for persons who are confined. The Governor issued this order under the authority of Section 1 of Article V of the Constitution of North Dakota and Chapter 37-17.1.

On March 28, 2020, the state health officer issued two travel quarantine orders that require travelers returning to the state from international travel or from identified states to self-quarantine for 14 days. The state health officer issued these orders under the authority granted by Section 23-01-05(12). The first order ([Appendix B](#)) was quickly superseded by a second order, 2020-02 ([Appendix C](#)). The differences between the two orders are the second order exempts essential critical infrastructure workers and is not retroactive in application.

On April 6, 2020, the Governor issued Executive Order 2020-21 ([Appendix D](#)), which requires individuals infected with the Coronavirus (COVID-19), and individuals who reside with such infected individuals, self-quarantine at home for 14 days or as directed by order of the state health officer. The Governor issued this order under the authority of Section 1 of Article V of the Constitution of North Dakota, Chapter 37-17.1, and Chapter 23-07.6.

On April 8, 2020, the state health officer issued a revised travel quarantine order, 2020-02.1 ([Appendix E](#)) which requires travelers to the state from another state or country to self-quarantine for the lesser of 14 days or the period of time the individual is in the state. The state health officer issued this order under the authority granted by Section 23-01-05(12).

On April 8, 2020, the state health officer issued order 2020-05 ([Appendix F](#)) which requires isolation of persons who have tested positive for COVID-19. The state health officer issued this order under the authority granted by Section 23-01-05(12).

On April 10, 2020, the state health officer issued quarantine order 2020-06 ([Appendix G](#)) which requires a 14-day self-quarantine of household members of people who have tested positive for COVID-19. The state health officer issued this order under the authority granted by Section 23-01-05(12).

On April 10, 2020, the Governor issued Executive Order 2020-21.1 ([Appendix H](#)) which adopts orders 2020-05 and 2020-06, issued by the state health officer, and provides clarification that during "self-quarantine, only family and household members, and health care workers and others performing services in support of elderly, disabled and vulnerable populations, are permitted in the place of residence." The Governor issued this order under the authority of Section 1 of Article V of the Constitution of North Dakota, Chapter 37-17.1, and Chapter 23-07.6.

On April 21, 2020, the Governor issued revised Executive Order 2020-14.1 ([Appendix I](#)) which revises the order relating to the suspension of Chapter 23-07.6. The Governor issued this order under the authority of Section 1 of Article V of the Constitution of North Dakota and Chapter 37-17.1.

On May 8, 2020, the state health officer issued a revised travel quarantine order, 2020-02.2 ([Appendix J](#)), which requires travelers to the state from another country to self-quarantine for the lesser of 14 days or the period of time the individual is in the state. The state health officer issued this order under the authority granted by Section 23-01-05(12).

On May 8, 2020, the state health officer issued a revised isolation order, 2020-05.1 ([Appendix K](#)), which revises the period of isolation for persons who have tested positive for COVID-19. The state health officer issued this order under the authority granted by Section 23-01-05(12).

## LEGAL BACKGROUND

Chapter 23-07.6, the chapter the Governor suspended in Executive Order 2020-14, and the law under which the Governor issued Executive Orders 2020-21 and 2020-21.1, was enacted by Senate Bill No. 2053 (1989). This bill was recommended by the 1987-88 interim Judiciary Committee, which was charged with studying state legal issues associated with AIDS. According to the interim committee's final report, the committee recommended the bill "to establish isolation measures and procedures for those individuals with a contagious or infectious disease who are determined to be a threat to public health." The bill modernized "North Dakota quarantine and isolation law by providing adequate due process safeguards and guidelines for the isolation of individuals determined to be a threat to public health."

Section 23-07.6-02(3) is the one provision of the chapter which was not suspended by Executive Order 2020-14. This law provides:

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.

The state health officer relies on Section 23-01-05(12) to issue the travel quarantine orders. This law was enacted by Senate Bill No. 2117 (1987), which was introduced at the request of the State Department of Health. This law provides the state health officer may:

Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities and decontamination measures. Written orders issued under this section shall have the same effect as a physician's standing medical order. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.

## TRAVEL AND QUARANTINE ORDERS State Health Officer Orders

### 2020-02

State health officer order 2020-02 applies to "all persons returning from any international travel and from domestic travel to specific locations within the United States as defined by the Centers for Disease Control and Prevention and the North Dakota Department of Health as areas of widespread community infection." The list of domestic travel locations is available online at <https://www.health.nd.gov/diseases-conditions/coronavirus/travel-quarantine-orders>. However, the order provides "essential critical infrastructure workers, as defined by the United States Department of Homeland Security, are exempt from this order." The list of exempted workers is available online at <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>.

A person subject to the order is "subject to quarantine immediately upon reentry to the State of North Dakota and for a period of fourteen days. The place of confinement is the subject person's place of residence." The order clarifies a violation of the order is a Class B misdemeanor, pursuant to Section 23-07.6-02(3).

Additional requirements of the order provide:

1. You are required to remain under quarantine at the location and for the period specified in SECTION C.
2. While under quarantine, you must take precautions, as directed by healthcare staff and Department of Health personnel, to prevent the possible spread of 2019-nCoV/COVID-19.
3. You must cooperate with the efforts of state or local health authorities to contact other exposed people to prevent the possible spread of 2019-nCoV/COVID-19. This includes providing information regarding people you have had contact with, places you visited or traveled to, and your medical history.
4. Only immediate household members are allowed to be at the place of quarantine. No other individuals are allowed at the place of quarantine unless approved by the North Dakota Department of Health.
5. You are only authorized to leave quarantine for reasons approved by the Department of Health. Prior to leaving quarantine for an approved reason, such as a physician appointment, you must coordinate your plan with the state or local health authority.
6. If you, or any immediate household members at the place of quarantine, have any symptoms suggestive of 2019-nCoV/COVID-19 you must contact the state or local health department immediately. Symptoms may include fever, cough, shortness of breath, body aches, headache, chills, or sore throat.

7. If you, or any immediate household members at the place of quarantine, become ill or are diagnosed with 2019-nCoV/COVID-19, it is necessary for the North Dakota Department of Health to investigate and trace any persons who may have been in contact with you while you were infectious with 2019-nCoV/COVID-19. You are required to cooperate with this investigation and provide complete and true information to the investigator. This includes providing information regarding people you had contact with, places you visited or traveled to, and your medical history.

#### 2020-02.1

State health officer order 2020-02.1 appears to revise order 2020-02. The order applies to "any person who enters North Dakota traveling from another state or country, and who is not merely passing through." However, the order provides the following people are exempt from the order:

- People commuting to and from North Dakota for work or for essential supplies and services;
- People engaging in outdoor activities for pleasure, hunting, or fishing, and going to available public parks or other public recreation lands so long as they remain at least 6 feet apart from individuals from other households; and
- Essential critical infrastructure workers, as defined by the United States Department of Homeland Security.

A person subject to the order is "subject to immediate quarantine for a period of [14] days from the time of entry into North Dakota or for the duration of the person's presence in North Dakota, whichever period is shorter." Violation of the order is a Class B misdemeanor, under Section 23-07.6-02(3), as well as an infraction under Section 23-07-21(1).

Additional requirements of the order provide:

1. The place of confinement is the subject person's home or residence, including hotel, motel, rented lodging, shelter, and similar facility;
2. While under quarantine precautions must be taken, as directed by health care staff and State Department of Health personnel, to prevent the possible spread of COVID-19;
3. A person under quarantine must cooperate with the efforts of state or local health authorities to contact other exposed people to prevent the possible spread of COVID-19, including providing information regarding people the person has been in contact with, places visited or traveled to, and medical history;
4. Only immediate household members are allowed to be at the place of quarantine and no other individuals are allowed at the place of quarantine unless approved by the State Department of Health;
5. A quarantined person is authorized to leave quarantine only for reasons approved by the State Department of Health and before leaving quarantine for an approved reason the plan must be coordinated with the state or local health authority;
6. If a quarantined person or any immediate household members at the place of quarantine have symptoms suggestive of COVID-19, the state or local health department must be contacted immediately; and
7. If a quarantined person or any immediate household member at the place of quarantine becomes ill or becomes diagnosed with COVID-19, it is necessary for the State Department of Health to investigate and trace any person who may have been in contact with the infected person while infectious with COVID-19. A person subject to the order is required to cooperate with this investigation and provide complete and true information to the investigator.

#### 2020-05

State health officer order 2020-05 applies to people in the state who have been identified as testing positive for COVID-19. A person who has tested positive is subject to isolation for at least 7 days after the onset of symptoms and 72 hours after becoming fever free and with symptom improvement. Violation of the order is a Class B misdemeanor, under Section 23-07.6-02(3), as well as an infraction under Section 23-07-21(1).

Additional requirements of the order provide:

1. While under isolation, a person shall take precautions, as directed by healthcare staff and State Department of Health personnel.
2. A person who has tested positive shall cooperate with the efforts of state or local health authorities to contact other exposed people to prevent the possible spread of COVID-19, including providing information regarding people with whom the person may have had contact and places visited or traveled to, and medical history.

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3. Unless other individuals are approved by the State Department of Health, only immediate household members are allowed to be at the place of isolation.
4. An isolated person is authorized to leave isolation only for reasons approved by the State Department of Health. Before leaving isolation for an approved reason, the person must coordinate the plan with the state or local health authority.
5. If any immediate household members at the place of isolation have any symptoms suggestive of COVID-19, the State Department of Health or local health department must be contacted.
6. If any immediate household members at the place of isolation have any symptoms suggestive of COVID-19, the State Department of Health shall investigate and trace any persons who may have been in contact with the person while infectious. The person who tests positive is required to cooperate with this investigation and provide complete and true information to the investigator.

## 2020-06

State health officer order 2020-06 applies to persons the State Department of Health has identified as a household contact of a person who has tested positive for COVID-19. However, the order provides "essential critical infrastructure workers, as defined by the United States Department of Homeland Security, are exempt from this order so long as they remain asymptomatic and additional precautions, as recommended by the Centers for Disease Control and Prevention, are implemented to protect the worker and the community." The additional precautions are available online at <https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>.

A person subject to the order is subject to quarantine immediately upon receiving notification from the State Department of Health for 14 days following the last contact with the contagious person. This order is retroactive in application. Violation of the order is a Class B misdemeanor, under Section 23-07.6-02(3), as well as an infraction under Section 23-07-21(1).

Additional requirements of the order provide:

1. While under quarantine a person shall take precautions as directed by healthcare staff and the State Department of Health.
2. A person under quarantine shall cooperate with the efforts of state or local health authorities to contact other exposed people to prevent the possible spread of COVID-19.
3. Unless other individuals are approved by the State Department of Health, only immediate household members are allowed to be at the place of quarantine.
4. A person under quarantine is allowed to leave quarantine only for reasons approved by the State Department of Health. Before leaving quarantine for an approved reason, the person shall coordinate the plan with the state or local health authority.
5. If a person subject to quarantine or an immediate household member at the place of quarantine has any symptoms suggestive of COVID-19, the State Department of Health or local health department must be contacted.
6. If a person subject to quarantine or an immediate household member at the place of quarantine becomes ill or is diagnosed with COVID-19, the State Department of Health shall investigate and trace any person who may have been in contact with the person while infectious. The person is required to cooperate with this investigation and provide complete and true information to the investigator.

## 2020-02.2

State health officer order 2020-02.2 revokes and supersedes state health officer order 2020-02.1. The order applies to "[a]ny person who enters North Dakota traveling from another country, or after traveling internationally within the past fourteen days, and who is not merely passing through." However, the order provides the following people are exempt from the order:

- People commuting to and from North Dakota for work or for essential supplies and services; and
- Essential critical infrastructure workers, as defined by the United States Department of Homeland Security.

A person quarantined under order 2020-02.1 due to international travel continues to be subject to quarantine under this revised order; however, it appears a person quarantined under order 2020-02.1 due to out-of-state travel

is no longer subject to quarantine. Violation of the order is a Class B misdemeanor, under Section 23-07.6-02(3), as well as an infraction under Section 23-07-21(1).

#### **2020-05.1**

State health officer order 2020-05.1 revokes and supersedes state health officer order 2020-05. The order is identical to 2020-05, except the period of isolation has been extended from 7 days to 10 days for people in the state who have been identified as testing positive for COVID-19. A person who has tested positive is subject to isolation for at least 10 days after the onset of symptoms and 72 hours after becoming fever free and with symptom improvement. Violation of the order is a Class B misdemeanor, under Section 23-07.6-02(3), as well as an infraction under Section 23-07-21(1).

### **Executive Orders**

#### **2020-14**

Executive Order 2020-14 suspends most of Chapter 23-07.6, which authorizes the state health officer and local health officers to issue confinement orders for persons who pose a substantial threat to the public health and provides a hearing process for persons who are confined. The order does not suspend the criminal penalty provision for violating a quarantine order.

#### **2020-21**

Executive Order 2020-21 provides:

1. Effective immediately, all individuals who tested positive for COVID-19 ("infected individual") are ordered to self-quarantine in their place of residence, for a period of fourteen days or as directed by order of the State Health Officer.
2. Effective immediately, all family and household members residing with the infected individual and identified by the North Dakota Department of Health as a contact of an infected individual are ordered to self-quarantine in their place of residence, for a period of fourteen days, or as directed by order of the State Health Officer.
3. During the period of self-quarantine, only family and household members are permitted in the place of residence.
4. Individuals under a self-quarantine order may only leave their place of residence with prior approval from the Department of Health.

#### **2020-21.1**

Executive Order 2020-21.1 appears to be a revision of subsection 3 of order 2020-21. The revised order adopts the two orders of the state health officer and essentially clarifies that during a period of self-quarantine, the limited access to a quarantined household allows access by family and household members, health care workers, and others who are performing services in support of elderly, disabled, and vulnerable populations.

#### **2020-14.1**

Executive Order 2020-14.1 revises order 2020-14. The revised order appears to reinstate provisions of Chapter 23-07.6 which relate to the authority of local health officers to issue confinement orders and to the authority of local boards of health to adopt quarantine and sanitary measures under Section 23-07-06, in compliance with Chapter 23-07.6, and relating to cooperation by persons subject to confinement as provided under Section 23-07.6-02(3).

It is not clear under this revised order whether all provisions of Chapter 23-07.6 relating to confinement orders issued by local health officers and quarantine and sanitary measures issued by local boards of health have been reinstated, including due process provisions allowing a person to have a court determine the validity of such an order or measure, or whether only the provisions of the chapter which relate to the powers of the local health officers and local boards of health have been reinstated. Due process would be better served by reading this revised order to reinstate the entire chapter as it related to orders issued by local health officers and measures by local boards of health.

### **CONCLUSION**

The Governor's executive orders suspending portions of Chapter 23-07.6 will remain in effect for the duration of the declared state of emergency. The first four state health officer orders discussed in this memorandum did not contain language regarding expiration dates; however, orders 2020-05.1 and 2020-02.2 indicate those orders are effective until revocation by the state health officer. The Governor's executive orders providing for self-quarantine of infected individuals will remain in effect until rescinded.

Specific issues related to these orders which may be ripe for legal analysis include whether the Governor's orders are suspensions of "regulatory" statutes, as required under Section 37-17.1-05(6)(a) or relate to ingress and egress as required under Section 37-17.1-05(6)(g), and whether the state health officer's travel quarantine orders, local health officer orders and local boards of health orders and measures, and the Governor's quarantine orders provide the necessary due process for those people subject to quarantine, isolation, and sanitary measures and orders.

Generally, constitutional issues that may arise in the case of quarantine and travel orders include the dormant commerce clause and the privileges and immunity clause. Such an analysis may include consideration of the extent to which nonresidents are treated differently from residents and how narrowly tailored the orders are to address the public health concerns.

ATTACH:11