

The CDC Has Less Power Than You Think, and Likes it That Way

BY **DENVER NICKS** OCTOBER 17, 2014 1:12 PM EDT

Director of the Centers for Disease Control and Prevention Tom Frieden has come under fire in recent days for what some charge is the agency's stumbling response to the appearance of Ebola in America. This week, reporters and lawmakers alike grilled Frieden over how two nurses in Texas contracted the virus and how one of them was able to board an airplane even after she reported a raised temperature.

Breakdowns in good practice notwithstanding, it's important to remember that Ebola in the U.S. is largely contained and very unlikely to lead to any kind of significant outbreak. Still, the charges leveled against Frieden raise a question that leads to a surprisingly complicated answer: just what, exactly, can—and should—the CDC do?

Since time immemorial, public health officials' main weapon against the outbreak of a disease has been to restrict the ability of people to interact with one another, also known as a quarantine. The term comes from the Latin "quadraginta," meaning 40, and is derived from the 40-day period ships traveling from plague-stricken regions were kept at bay before being allowed to dock in medieval European ports.

Imposing a quarantine—effectively stripping innocent people of the most basic right to move freely in the world—is one of the most serious actions a government can take against its own citizenry. Partly for this reason, in the

→ **Get more TIME. Create a free account. Go Now.**

American federal system (designed from the outset to check the power of the national government), the power of quarantine resides largely with state and local authorities. Should Texas, or any other state, someday face the threat of a true epidemic, the states have broad authority to restrict the movement of people within their own borders. Public health codes granting the state power to impose quarantine orders vary from state to state, of course. Violating a quarantine order in Louisiana is punishable by a fine of up to \$100 and up to a year in prison; in Mississippi the same infraction could cost a violator up to \$5000 and up to five years in prison.

The federal government does have its own powers. The CDC, as the U.S.'s primary agency for taking action to stop the spread of disease, has broad authority under the Commerce Clause of the Constitution to restrict travel into the country and between states of an infected person or a person who has come in contact with an infected person, according to Laura Donohue, director of the Center on National Security and the Law at Georgetown Law School. Federal quarantine can be imposed, too, on federal property, like a military base or National Forest land. And as the preeminent employer of experts on public health crises, the CDC is always likely to get involved within any affected state in the event of a looming pandemic.

But its power to act is extremely restricted. The agency traditionally acts in an advisory role and can only take control from local authorities under two circumstances: if local authorities invite them to do so or under the authority outlined in the Insurrection Act in the event of a total breakdown of law and order.

And here the picture becomes murkier yet because authority does not always beget power.

“It’s not a massive regulatory agency,” said Wendy Parmet, a professor in public health law at Northeastern University in Boston. “They don’t have ground troops. They don’t have tons of regulators. They’re scientists. Even if the states asked them to do it it’s not clear how they would do it.”

→ **Get more TIME.** ~~Create a free account.~~ ~~Go New~~

Even in the highly unlikely event that the CDC were called to respond to a—
cur—pandemic, quarantine and
isolation would be imposed not by bespeckled CDC scientists but by local or
federal law enforcement or troops. Most importantly, the CDC is extremely
reluctant to be seen as a coercive government agency because it depends as
much as any agency on the good will and acquiescence of citizens in order to
respond effectively to a public health emergency. When the bright lights of the
Ebola crisis are not on it, the CDC will still need people to get vaccinated, to go
to the doctor when they get sick, and to call the authorities if they see trouble.

“Our public health system is built on voluntary compliance,” Donohue tells
TIME. “If the CDC starts to become the enemy holding a gun to [someone’s]
head and keeping them in their house, they lose insight.”

Get The Brief. Sign up to receive the top
stories you need to know right now.



Check the box if you do not wish to receive promotional offers via email from TIME.

You can unsubscribe at any time. By signing up you are agreeing to our [Terms of Use](#) and [Privacy Policy](#).
This site is protected by reCAPTCHA and the [Google Privacy Policy](#) and [Terms of Service](#) apply.

CONTACT US AT LETTERS@TIME.COM.

SHARE THIS STORY