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Human rights and other provisions in the revised International Health Regulations (2005)

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Received 1 August 2007; accepted 7 August 2007
Available online 27 September 2007

Summary In May 2005, the World Health Assembly of the World Health Organization (WHO) adopted the revised International Health Regulations (2005), which have now entered into force for WHO Member States across the globe. These Regulations contain a broad range of binding provisions to address the risks of international disease spread in international travel, trade and transportation. Important elements include multiple provisions, whether denominated in terms of human rights or other terminology, that are protective of interests of individuals who may be subject to public health measures in this international context. With the vast (and increasing) numbers of persons undertaking international voyages and the global coverage of these revised Regulations, they are an important development in this area. This article describes a number of these key provisions and some of the related issues they present.

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Background

For several decades, the World Health Organization’s (WHO) International Health Regulations (‘IHR’ or ‘Regulations’), formerly the WHO International Sanitary Regulations, were the primary global legal agreement against the international spread of infectious disease. While important, these prior Regulations were quite limited in scope, dealing primarily with three to six infectious diseases, but none of the new, emerging or re-emerging diseases (including those that had become drug resistant), or other critical long-standing diseases. By the 1990s, the version of the Regulations adopted in 1969 had also become outdated in terms of policy and technical approach. In the intervening decades, international travel and other traffic flows have increased sharply, and with them the opportunities for globalized disease spread. To address these concerns, the World Health Assembly in 1995 commenced the process of revising the Regulations to update them in policy and technical aspects, and to broaden their scope to address the full range of internationally transmissible disease risks, whether currently known or as yet unknown. These newly
revised IHR (2005) were adopted by the World Health Assembly on 23 May 2005 and are now in force and legally binding for 191 of WHO’s 193 Member States; the last two Member States are expected to become parties in August 2007 and in early 2008.

One of the important areas of innovation in the IHR (2005) involves their inclusion of explicit protections of the interests of individuals within the scope of this agreement, primarily with reference to international ‘travellers’ (defined in the Regulations as a ‘person undertaking an international voyage’) in a range of circumstances. This subject was one of the key parts of the negotiations of the WHO Member States resulting in the revised Regulations negotiations. The importance of these protections for national delegations in the negotiations is underlined by the placement of human rights as the first ‘principle’ articulated in Paragraph 1 of Article 3 of the Regulations, requiring that the ‘implementation of these Regulations shall be with full respect for the dignity, human rights and fundamental freedoms of persons’.

The global agreement to the revised Regulations reflects a broad consensus in a binding legal instrument, including agreement on the provisions that are the subject of this article. The broad scope of the IHR (2005) in terms of their global geographic coverage, the important subjects they cover, their coverage of an expansive array of diseases and public health events, and the escalating numbers of international travellers worldwide contributes to the potential overall impact of these new legal provisions. At the same time, the IHR (2005) are only now entering into force, and the practices under, and interpretations of, the new Regulations by States Parties, WHO and other international actors are in the process of being established. As with many complex, freshly negotiated international legal instruments, the precise meaning or import of some provisions, and how they may relate to other articles in the Regulations or other relevant international instruments in particular circumstances, may not always be readily apparent.

This article presents a summary description of some of the key provisions and some of the issues that they raise.

Scope of the IHR (2005)

Diseases, public health risks and events

The IHR (2005) completely revise the prior 1969 Regulations, with extensive new mandates and obligations for the States Parties and for WHO. Article 2 provides that their overall ‘purpose and scope are to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade’. More specifically, the fundamental term ‘disease’ is defined as ‘an illness or medical condition, irrespective of origin or source that presents or could present significant harm to humans’. As indicated in Table 1, the definitions of other key terms, such as ‘event’ and ‘public health risk’, are similarly broad. In terms of notifying diseases and events to WHO, for example, States Parties are obligated to notify any public health ‘event that may constitute a public health emergency of international concern’ based on specified criteria, as well as other international public health risks.

With regard to travellers, the IHR (2005) also regulate key public health measures that States Parties may implement against disease risks in international travel (persons), as well as in international transport (ships, aircraft, other conveyances) and trade (goods, cargo). Under the 1969 Regulations, protections for travellers were often stated in the context of limitations on health measures that countries could implement against the three ‘quarantinable’ diseases (cholera, plague and yellow fever) covered under the Regulations since 1981. For example, the prior Regulations

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**Table 1** Key definitions relating to the scope of the International Health Regulations (2005).

| Definitions (Article 1)                                      |
|---------------------------------------------------------------|
| • Disease: ‘an illness or medical condition, irrespective of origin or source, that presents or could present significant harm to humans’; |
| • Event: ‘a manifestation of disease or an occurrence that creates a potential for disease’; and |
| • Public health risk: ‘a likelihood of an event that may affect adversely the health of human populations, with an emphasis on one which may spread internationally or may present a serious and direct danger’. |
prohibited vaccination against plague as a condition of entry to a State, as well as rectal swabbing in the context of cholera. Under the revised IHR (2005), with the expanded coverage of disease, the scope of regulation of health measures applicable to international travellers is also broadened in light of the many covered diseases that may be spread by persons on an international voyage. Some of the other, more prominent current diseases of concern include: polio; tuberculosis (particularly drug-resistant tuberculosis); influenza; Ebola and Marburg viral haemorrhagic fevers; meningococcal disease; West Nile fever; and severe acute respiratory syndrome.

**International travel**

The breadth of coverage of the IHR (2005) and the vast numbers of travellers undertaking voyages that cross international borders every year guarantee that its provisions will be applicable to large numbers of individuals. In 2005, according to the World Tourism Organization, there were more than 800 million international tourist arrivals. Overall, the numbers of travellers (international tourist arrivals) to each region were substantial: Africa, 36.7 million; Americas, 133.5 million; Asia and Pacific, 155.4 million; Europe, 441.5 million; and the Middle East, 39.1 million. The areas of greatest growth in international tourist arrivals were Africa (+9%), Asia and Pacific (+8%), and the Middle East (+8%).

**Health measures applicable to travellers**

As noted, the IHR (2005) provide for a range of health measures potentially applicable to international travellers depending upon the particular circumstances and requirements. Specific examples include: physical/medical examinations; health document requirements (including proof of vaccination or prophylaxis); certain types of itinerary and contact information; vaccination/prophylaxis; inspection of baggage; placing persons under public health observation; and the possibility of quarantine or isolation. Additional provisions address when international travellers may be denied entry to a country on public health grounds. In the context of an event that has been determined by the Director-General of WHO to be a public health emergency of international concern, Article 15 provides that the Director-General will also issue specific temporary recommendations under the IHR (2005) of appropriate health measures to prevent or reduce spread of the disease and interference with international traffic. In Article 18, the Regulations contain a non-exclusive list of 13 potentially relevant recommendations applicable to persons as appropriate to the circumstances (as well as others for baggage, cargo, containers and conveyances), from advice that no specific measures are appropriate, to advice that States require vaccination or prophylaxis, to recommending implementation of contact tracing or potential exit screening or other restrictions on persons from affected areas.

| Table 2 | Key human rights and other relevant provisions in the International Health Regulations (2005). |
|---------|-----------------------------------------------------------------------------------------------|
| Definitions (Article 1) |
| • Traveller: ‘a natural person undertaking an international voyage’ |
|   • ‘international voyage’: ‘in the case of a traveller, a voyage involving entry into the territory of a State other than the territory of the State in which that traveller commences the voyage’ |
| • Health measure: ‘procedures applied to prevent the spread of disease or contamination; a health measure does not include law enforcement or security measures’ |
| • See also definitions of: ‘intrusive’, ‘invasive’, ‘isolation’, medical examination’, ‘personal data’, ‘public health observation’ and ‘quarantine’ |

Selected specific provisions

• Respect for dignity, human rights, fundamental freedoms of persons (Article 3.1, above)
• Implementation guided by Charter of United Nations and Constitution of World Health Organization (Article 3.2)
• Prior informed consent for medical examinations, vaccination, other measures (Articles 25.3 and 25.4)
• Treatment of travellers (Article 32)
• Authorizations and restrictions on charges to travellers for public health measures (Article 40)
• Protection for personal health information (Article 45)
• Use of least invasive and intrusive measures available that would achieve the appropriate level of public health protection as specified (Articles 23.1(a)(iii), 23.2, 43.1; see also 17(d))
Key provisions

For the purposes of this article, a number of these provisions can be divided into several categories (see Table 2).

Principles (Articles 3.1 and 3.2)

As noted above, the central principle on this issue mandates that the IHR (2005) are to be implemented ‘with full respect for the dignity, human rights and fundamental freedoms of persons’. In contrast to most other related provisions, which refer to (international) ‘travellers’, this principle expressly refers to ‘persons’, a potentially broader category. Although not as explicit on this issue, another principle mandates that implementation of the Regulations is also to ‘be guided by the Charter of the United Nations and the Constitution of the World Health Organization’, which can also provide guidance on evaluating application of IHR (2005) provisions to travellers, whether denominated as ‘human rights’ or otherwise. Although generalized, these principles provide guidance on interpreting and applying the other, more specific articles to travellers.

Prior informed consent (Articles 23.3–23.4)/ Safety standards (Article 23.5)

A number of provisions expressly provide for the prior informed consent of travellers (with certain exceptions) before being subject to medical examination, vaccination, prophylaxis or other health measures under the Regulations. While the basic focus of each of these provisions is clear, the requirements are additionally to be ‘in accordance with the law and international obligations of the State Party’. As elsewhere in the IHR (2005) generally, this ‘law’ (presumably including applicable national law) and these ‘international obligations’ are not further specified. Although not involving prior informed consent, the same article requires that medical examinations and procedures, as well as vaccination or other prophylaxis, be carried out in accordance with established national or international safety guidelines or standards.

Treatment of travellers (Article 32)

Potentially, some of the most important of these protections are in Article 32. In language similar to the principle on human rights and fundamental freedoms noted above, the article requires in general that States Parties ‘treat travellers with respect for their dignity, human rights and fundamental freedoms and minimize any discomfort or distress’ associated with implementation of health measures under the Regulations, including by taking into consideration their gender, sociocultural, ethnic and religious concerns. In more concrete terms, the article specifically requires that States Parties minimize this discomfort or distress by ‘providing or arranging for adequate food and water, appropriate accommodation and clothing, protection for baggage..., appropriate medical treatment, means of necessary communication... and other appropriate assistance for travellers who are quarantined, isolated or subject to medical examinations or other procedures for public health purposes’. This provision may be particularly relevant in the context of a major outbreak or epidemic that involves quarantining or isolating substantial numbers of international travellers.

Charges to travellers for health measures (Article 40)

From a financial perspective, additional important issues for international travellers concern whether they will be financially responsible for any health measures applied to them that are implemented for public health purposes. This was another intensely debated set of issues during the negotiations. In general, the IHR (2005) requirements distinguish between charges for vaccinations or prophylaxis provided on arrival (which are not generally prohibited from being charged to the traveller under the Regulations unless the charges were not published at least 10 days earlier) and certain other measures that may generally not be charged to the traveller under the Regulations unless the charges were not published in advance as required. In addition, where such charges are permitted, each State Party must have a single tariff for them, they may not exceed the actual cost of the service rendered, and the charge must not discriminate based upon nationality, domicile or residence of the traveller concerned. However, these restrictions on charges do not apply to travellers seeking temporary or permanent residence or to charges for health measures that
are not implemented primarily for a public health purpose.

**Other selected provisions**

In addition to these provisions, many others are also relevant in this context. These include:

- authorizations and restrictions on use of personal health information collected or received under the Regulations (Article 45; see also definition of ‘personal data’);
- authorizations and restrictions on health document requirements from travellers [Articles 31, 35; see also Article 23(a)];
- requirements that certain health measures applied to travellers that exceed or are in addition to others prescribed in the Regulations ‘be not more invasive or intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection’ [Articles 23.1(a)(iii), 23.2, 43.1; also Article 17(d)];
- authorizations and restrictions on requirements for medical examinations, vaccination, prophylaxis and other health measures as conditions for entry into a State Party (Article 32); and
- requirements that health measures implemented generally (whether concerning individuals, cargo or conveyances) under the Regulations ‘be initiated and completed without delay, and applied in a transparent and non-discriminatory manner’ (Article 42).

**Issues for further consideration**

With a new international agreement containing this many new provisions, there are inevitably some questions about how these provisions may be interpreted or implemented in various circumstances. One issue is how these provisions may be considered in the context of other existing relevant international instruments, such as the International Covenant on Civil and Political Rights, particularly with regard to the more general provisions in the IHR (2005), including Article 3.1 (principle) and Article 32 (treatment of travellers) noted above. This is further complicated by the text in a number of relevant articles providing that States Parties may take certain steps ‘[s]ubject to applicable international agreements’, including, for example, Article 23 (health measures on arrival and departure). Article 57.1 of the Regulations provides that the IHR (2005) are to be ‘interpreted so as to be compatible’ with these other instruments, and that the Regulations ‘do not affect the rights and obligations of any State Party’ under them.

A further set of issues concerns identification of those who are subject to these provisions in the Regulations. As noted, under the IHR (2005), ‘travellers’ are, by definition, international (i.e. ‘undertaking an international voyage’). Most of the above provisions, but not all of them (the general ‘principle’ in Article 3.1 refers to ‘persons’), refer to treatment of ‘travellers’. Although it may not turn out to be an issue in ‘real life’, there may be questions about the status of particular individuals (see definition of ‘international voyage’ applicable to travellers). Theoretically at least, a related set of issues may arise in events involving both (international) travellers, to whom the IHR (2005) would generally apply, as well as local nationals, perhaps those in or near a port or airport. Separately, it should be noted that some of these provisions exclude travellers who are seeking temporary or permanent residence from the otherwise broader category of travellers covered under the Regulations, as in Article 31.1 (concerning health-related entry requirements for travellers) and Article 35 (concerning requirements for health documents in international travel).

Basic issues for resolution will also involve the underlying relationship within or between various relevant provisions in the Regulations themselves. Some have both types of exceptions; Article 30 (restrictions on health-based requirements for entry), for example, includes both specifically stated exceptions and a cross-reference to measures permitted under other articles. Also, the breadth of some of these exceptions is not always clear.

For scholars and other interested persons, it is also worth noting that the last three drafts of the proposed text of the revised Regulations, prior to the final adopted text, are available on the WHO International Health Regulations website, with information on the evolution of these provisions in the course of the revision process and negotiations.

**Acknowledgements**

This paper was presented at the President Session of the American Public Health Association Conference, Boston, November 2006.

**Disclaimer**

The author is a staff member of the World Health Organization. The author alone is responsible for the views expressed in this publication and they do not necessarily represent the decisions, policy or views of the World Health Organization.
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