

Due Process and Public Health

"[N]or shall any person . . . be deprived of life, liberty, or property, without due process of law."

Fifth Amendment to the U.S. Constitution

The Fifth Amendment to the United States Constitution contains the Due Process Clause, which limits the federal government's actions in respect of liberty and property rights. The Fourteenth Amendment applies these limitations to state actions. Because local jurisdictions derive their power from the state, the limitations apply to actions of local government as well. In addition, the Fourth Amendment guarantees the "right of people to be secure in their

but not a full hearing. And lesser forms of invasion, including disease surveillance, require only minimal safeguards to avoid abuse of discretion by administrative officials. A public health official considering action that would restrain the liberty or invade the body of an individual must adhere strictly to any statutory or regulatory requirements and exercise discretion in a fair and rational manner. It is always wise to seek advice of counsel before taking any significant action outside the ordinary course.

Property Interests and Public Health

Property, or economic, interests are also protected by the due process clause and the Fourth Amendment. In public health practice, this means there are procedural rules that apply to inspections, actions on occupational or business licenses and detainment or seizure of goods. The constitutional protections apply to seizures based on civil and criminal law.

SEARCH AND SEIZURE IN PUBLIC HEALTH PRACTICE

Health departments conduct various types of inspections. Some of them require consent or a warrant but others are permitted by statute or regulation. Typically, a government agency is required to get owner consent or secure a warrant before entering onto the property of an individual or business entity to conduct a search.

Exceptions particularly relevant to public health practice exist. First, an individual or representative of a business may consent to a search; this is quite common with respect to health and safety inspections. Second, public health officials may conduct inspections without a warrant in an emergency, when there is a significant and imminent threat to public health. Third, public health staff may inspect areas of a business that are open to the public.

Perhaps most importantly, public health officials may conduct inspections of "pervasively regulated" businesses without a warrant. In these circumstances, the regulatory scheme may imply consent to inspections and searches or serve as notice of possible inspections and searches. These may be scheduled visits or random inspections. Warrantless inspections or searches of pervasively regulated businesses must adhere to the statutory procedure.

Conclusion

Public health officials should be aware of the limitations placed on their power by the Due Process Clause and the Fourth Amendment. Before taking any action that would interfere with an individual's liberty or invade bodily integrity or conducting inspections or seizing property, a public health