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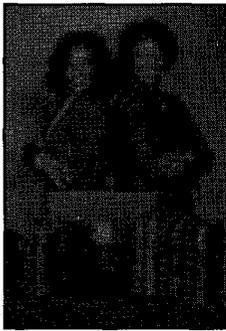
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Emergence and Re-Emergence of H1N1 Influenza: Uncanny Parallels Between the Administrations of U.S. Presidents Woodrow Wilson and Barack Obama

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Imagine this scenario: it is 1918 and you are on your way to the theater to see *Oh, My Dear!* You approach the box office and are informed via a large placard that the theater is closed. Upset and somewhat confused, you walk to the local saloon seeking answers, and of course, some libation. To your surprise and chagrin, the saloon is also closed. You decide to walk to the town square to ascertain the extent of the public closures. As you approach the city morgue, you observe mounds of lace, silk and tweed fabric reminiscent of a landfill. You get closer to this landfill; the scene is gruesome—what you discover are bodies of dead men and women stacked on the streets. The lifeless victims described in this scenario met their demise by the virulent H1N1 Influenza virus.

What is the H1N1 Influenza and when did it first emerge? The first H1N1 Influenza virus noted in history, known as the Spanish Flu, emerged in 1918 during World War I and continued through 1920. This influenza pandemic took an estimated 50 million lives worldwide. It was one of the most ferocious H1N1 Influenza virus strains seen to date globally. Conversely, the 2009 H1N1 Influenza virus, which re-emerged in April 2009 and claimed 12,220 lives worldwide as of 27 December 2009,¹ is an unpredictable virus and, as demonstrated by the current Administration, should be taken seriously. The 2009 H1N1 Influenza appears to be more brutal on younger and more vulnerable populations such as children under five years old, pregnant women, and critical care patients in hospitals. This

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1. WHO, Global Alert & Response (GAR), *Pandemic (H1N1) 2009 – Update 81*, available at http://www.who.int/csr/don/2009_12_30/en/index.html.

virus is less likely to infect members of the population over 60 years of age because most of them have a preexisting immunity to the 2009 H1N1 Influenza. At this time, the 2009 H1N1 Influenza appears to be milder than the Spanish Flu, and the two prior influenza pandemics that devastated the world, specifically the 1957-58 Asian H2N2 Flu which claimed 1.5-2 million lives, and the Hong Kong H3N2 Flu in 1968-1969 that took one million lives.

Can the re-emergence of the H1N1 Influenza be contained? This article will answer this question and compare the re-emergent 2009 H1N1 Influenza and the 1918-1920 Spanish Flu in terms of severity. Accordingly, this article will also provide an overview of the public health laws created to address the H1N1 Influenza pandemic since the outbreak of the Spanish Flu to present, explain the reasons for changes in the laws, and discuss the benefits and the drawbacks of these laws. The authors will also explore some similarities in the political arenas during the time of President Woodrow Wilson, who was in office when the H1N1 Influenza first surfaced in 1918-1920, and during President Barack Obama's Administration when the 2009 H1N1 influenza strain surfaced.

The inscrutability of the 1918-1920 H1N1 Influenza pandemic that left many epidemiologists baffled, re-surfaced in the spring of 2009 with the re-emergence of the H1N1 Influenza, also known as "Swine Flu," with eerie similarities to the initial strain that claimed the lives of more than 50 million people worldwide. More prophetic than this revelation, are the uncanny parallels between the political climates and macro-economic environments of President Woodrow Wilson's Administration during the 1918 outbreak of this virulent virus and President Barack Obama's Administration in 2009.

The most striking similarities between the H1N1 Influenza of the early 1900s and its redux, is that both the Wilson and Obama Administrations were facing heated partisan opposition on key political issues in addition to dealing with incessant wars abroad. Another comparison worth noting is the outbreak pattern of the H1N1 Influenza back then and now; the pandemic of 1918-1920 and 2009 (and possibly through 2010) both occurred in three waves. The first wave occurred in the spring and summer, the second wave in the fall, and the third wave in the winter, with lasting effects carrying ramifications into the following year. During the Wilson and Obama Administrations the legal mechanisms and corollary responses were vastly different in the public health law sector with regard to containing and quelling the H1N1 Influenza. There were significantly different global regulatory responses from the World Health Organization (WHO) to the 1918-1920 H1N1 influenza and the 2009 H1N1 influenza and these differences are described later in this article.

What we know is that influenza has a pattern of striking with a

vengeance throughout history. This deadly virus, with varying strains, has mutated over the years and caused pandemics and global epidemics. Although public health laws primarily reside at the state level, the U.S. President, along with the Secretary of Health and Human Services, has the legal authority to use law enforcement measures to prevent individuals with certain communicable diseases from entering the country and with preventing the spread of identified communicable diseases between states. The President also has full legal authority to issue an Executive Order (EO) to isolate and/or quarantine individuals with communicable diseases to prevent transmission. Influenza that can cause a pandemic is considered a communicable disease for Executive Order purposes.

During 1918, President Wilson was inundated with World War I (WWI) after declaring war on Germany. Many of the laws enacted during Wilson's presidency dealt with labor issues and foreign policy. Many countries restrained the press from reporting on the impact of the H1N1 Influenza. In fact, the press focused on positive news in an attempt to boost morale during wartime. Bound by federal obligation, in the spring of 1918 the Public Health Service began to require state and local health departments to provide reports about diseases in their communities. Unfortunately, the U.S. disease-reporting process during the time of the Spanish Flu did not consider influenza a reportable disease until the second wave of the deadly virus in the fall of 1918, which proved too late to save millions of Americans.

President Obama, although in the midst of the Iraq and Afghanistan wars, appropriately declared H1N1 Influenza a "National Emergency" in June 2009. Prior to this declaration, Kathleen Sebelius, the Secretary of Health and Human Services, declared a public health emergency under section 319 of the Public Health Services Act.² Her declaration amended the October 10, 2009 declaration under the Public Readiness and Emergency Preparedness Act to cover pandemic influenza antivirals. Hence, the Obama Administration rapidly identified the H1N1 Influenza virus and implemented public health measures, which included guidance to health professionals and the general public, working with pharmaceutical companies to develop an effective vaccine, and taking proactive steps to reduce the impact of this pandemic. Under the Homeland Security Act of 2002, several agencies were charged with working closely to respond to declared public health emergencies, including the 2009 H1N1 Influenza.

The federal public health efforts during President Wilson's time were hampered due to the lack in communication infrastructure (television did not exist at this time) and the overarching burden of WWI. Today, patient safety is enhanced because governmental officials worldwide have effective

2. 42 U.S.C. 247(d).

communication tools such as the Internet, cell phones, and television to educate and provide information to the populous on ways to control and contain the spread of the H1N1 Influenza.

Little was accomplished on the state level in 1918-1920 to thwart the spread of the H1N1 Influenza. Many states did not have pandemic flu plans and lacked the ability to coordinate resources to control the deadly virus. Close troop quarters and massive troop movements during WWI accelerated the H1N1 Influenza pandemic. As soldiers were deployed around the globe during wartime, they played a major role in spreading the H1N1 Influenza, thus making it a global health crisis. As noted previously, influenza was not a reportable disease until the early fall of 1918 so soldiers were not warned about preventing the spread of the virus and the public at-large was not given guidance on how to contain H1N1. The virus was so widespread and rampant by that time that most states were unable to keep accurate records. Therefore during the height of the pandemic, many states failed to report the number of infected people to the Public Health Service. As thousands of dead bodies mounted up across the U.S., several states imposed quarantines to prevent the spread of the virus.

Current state laws provide for a more coordinated and effective legal response to containing the H1N1 Influenza. States have been granted power by the U.S. Supreme Court to mandate vaccine use whenever a state governor declares a public health emergency. States have a legal right to quarantine citizens to prevent the spread of certain communicable diseases (this was the case in 1918 as well). Most states approved revisions to state health laws in order to make them conform to provisions of the Model State Emergency Health Powers Act (MSEHPA), a proposal drafted after September 11, 2001.³ MSEHPA recommends expanded police powers to state public health officials to enforce quarantines and mandatory use of vaccines when a state declares a public health emergency. Many states also have pandemic health emergency plans, which provide guidance for responding to public health emergencies, including H1N1 Influenza.

The 2009 influenza pandemic is proving challenging, even on the international front, as this disease has the potential to interfere with international travel and trade. The WHO, a specialized agency of the United Nations, acts as a coordinating authority on international public health matters and has developed the International Health Regulations (IHR). The IHR, which became effective on June 15, 2007, aims to help the international community prevent and respond to acute public health risks that threatens people worldwide. The IHR is an international legal instrument that is binding on 194 member countries across the globe. The

3. This model act was prepared by the Center for Law and the Public's Health, at Georgetown and Johns Hopkins Universities.

WHO is also responsible for raising the global pandemic alert level when the world community is faced with a public health emergency. This global coordinated public health effort did not exist during the initial emergence of H1N1 in 1918 through 1920, which explains the extremely high death toll worldwide.

The current laws in place on the federal and state levels provide a coordinated, effective, and practical means for containing pandemics such as H1N1 Influenza. The use of the Internet and traditional media outlets have also facilitated the worldwide mission of preventing the spread of the nascent version of the H1N1 virus. Healthcare professionals and those entrusted to maintain confidentiality in many settings are talking openly and freely about the H1N1 Influenza and people who have been infected with the virus. We broadened our influenza lexicon to include “underlying health conditions” to justify why someone met their demise to H1N1 and/or why someone potentially survived after infection. These free-flowing discussions about people’s underlying health conditions and H1N1 diagnoses could potentially violate provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)⁴ dealing with the handling of personal health information (PHI). Although we declared a “National Emergency” as a result of H1N1, which allows more streamlined access to victims’ health information, the law does not grant *carte blanche* for sharing PHI.

To strengthen current public health laws and to ensure PHI is protected, state public health officials should add provisions to the Public Health Service Act that require immediate notification and quarantine of individuals infected with any pandemic influenza (as stipulated for other communicable diseases), including confidential dismissal from public settings (i.e., the workplace, school, domestic and internal travel, etc.), and include information regarding consequences for disseminating confidential personal health information in violation of the law.

The impact of the emergence of H1N1 Influenza in 1918-1920 and its re-emergence in 2009 took a toll on the world community with its virulence and unpredictability. The public health laws created and later amended as a result of the H1N1 Influenza have been instrumental in containing the spread of this ferocious H1N1 virus. Current laws provide a sound legal framework for responding to influenza that can cause a pandemic. With some fine-tuning to these laws, we can assure a heighten-level of public health security to further control the spread of pandemic influenza in the U.S. and worldwide.

4. HIPAA, 45 C.F.R. § 164.504 (1996).