

The Zika Outbreak Is Declared a Public Health Emergency in Puerto Rico

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On August 12, 2016, Sylvia Matthews Burwell, the Secretary of Health and Human Services (HHS), declared a [public health emergency](#) for Puerto Rico "[a]s a consequence of the outbreak of Zika virus and its potential effect on pregnant women and children born to pregnant women with Zika."

Background

The [Zika virus \(ZIKV\)](#), first recognized in Uganda in 1947, emerged in South America early in 2015. Although most cases of infection are mild, [prenatal infection](#) can cause severe birth defects, including microcephaly. ZIKV is [transmitted](#) among humans by the bite of an infected mosquito, by sexual contact, from mother to fetus, and through contaminated [blood transfusions](#). Protecting pregnant women from infection is a public health priority.

[ZIKV has spread](#) from South America to Central America and the Caribbean. [About 2,000 infections](#) have been reported on the U.S. mainland, mostly among travelers from countries with widespread mosquito-borne ZIKV transmission. To date, only [one neighborhood in Florida](#) has experienced local (i.e., mosquito-borne) transmission.

In contrast, [Puerto Rico](#) has been hard hit. Local transmission on the island was [first recognized in November 2015](#). Since then, [more than 10,000 cases](#) have been reported, more than 1,000 of them in pregnant women. Mosquito control measures have faltered, and Dr. Thomas R. Frieden, Director of the U.S. Centers for Disease Control and Prevention (CDC), said that data from July showed [an "explosion" of ZIKV cases](#).

In February 2016 the [Administration requested supplemental funding](#) of \$1.9 billion for the Zika response, including primary care, maternal and child health, and Medicaid assistance for Puerto Rico. Congress has considered but not passed a [supplemental appropriation](#) to date, and HHS has reprogrammed \$670 million in funds from other sources for its domestic and international response efforts.

Figure 1. Portion of a Brochure in Spanish Urging Protection from Mosquito Bites

Prevención de picaduras de mosquitos

No todos los mosquitos son iguales. Diferentes mosquitos transmiten distintos virus y pican en diferentes momentos del día.

Tipo de mosquito	Virus que transmiten	Hábitos al picar
 Aedes aegypti Aedes albopictus	Chikunguña, dengue, Zika	Pican principalmente durante el día, pero también pueden picar en la noche.
 Culex	Virus del Nilo Occidental	Del anochecer a la mañana.

Protéjase y proteja a su familia de las picaduras de mosquitos.

Source: Centers for Disease Control and Prevention (CDC) and the Departamento de Salud del Estado Libre Asociado de Puerto Rico (Puerto Rico Department of Health), "Información Sobre el Virus del Zika" (Information About the Zika Virus), <http://www.salud.gov.pr/Sobre-tu-Salud/Pages/Condiciones/Zika.aspx>.

Public Health Emergency Declaration Authority

The term "public health emergency" is used generically to refer to a variety of situations that involve threats to life and health, or threats to health system infrastructure. Federal and state laws use the term in various contexts to trigger broad or specific response authorities or to release additional funds.

On August 12, HHS Secretary Burwell declared the Zika outbreak to be a public health emergency pursuant to Section 319 of the Public Health Service Act (PHSA), [42 U.S.C. §247d](#), one of several public health emergency legal authorities available to her. The "Section 319" authority may be invoked if the Secretary "determines ... that—(1) a disease or disorder presents a public health emergency; or (2) a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists."

A determination under Section 319, alone or concurrent with other legal provisions, allows the Secretary to take [certain actions not otherwise authorized](#), including (among others)

- awarding grants or contracts; and studying the causes, treatment, or prevention of the relevant disease or disorder;
- waiving certain management and reporting requirements of grantees; and
- streamlining federal hiring and payment procedures for response personnel.

Although a Section 319 determination also allows the Secretary to access a [Public Health Emergency Fund](#) for response purposes, there have not been any funds in this account since 2000.

The Declaration as Applied to the Zika Response in Puerto Rico

In a [press release](#) accompanying the determination, Secretary Burwell listed two specific actions that the government of Puerto Rico may take pursuant to the Section 319 determination. Each of them allows federal funds to support personnel in Puerto Rico who work on the ZIKV response effort. The enabled authorities are as follows:

- funding to hire and train unemployed workers to assist in mosquito control and outreach and education efforts through the U.S. Department of Labor's (DOL's) [National Dislocated Worker Grant \(DWG\) program](#); and

- temporary reassignment of local public health department or agency personnel who are funded through PHSA programs in Puerto Rico to assist in the Zika response.

The DWG program, which is authorized by Section 170 of the Workforce Innovation and Opportunity Act (WIOA; [P.L. 113-128](#)), funds grants that are awarded primarily to states and local Workforce Development Boards (WDBs) to provide services for eligible individuals. Eligible workers include those dislocated by economic conditions, military installation closures, and emergency or disaster conditions. DWG services include job search assistance and training for eligible workers. In addition, DWG funding may be used to provide direct employment ("disaster relief employment") to individuals for a period of up to 12 months for work related to a disaster.

Typically DOL's authority to award disaster relief grants under the DWG program would be triggered by a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([the Stafford Act](#)). However, because the ZIKV outbreak [has not led to a Stafford Act declaration](#) to date, the Section 319 determination enables the DWGs pursuant to WIOA Section 170(a)(1)(B) ([29 U.S.C. §3225\(a\)\(1\)\(B\)](#)), regarding "an emergency or disaster situation of national significance that could result in a potentially large loss of employment, as declared or otherwise recognized by the chief official of a Federal agency with authority for or jurisdiction over the Federal response to the emergency or disaster situation."

In addition, [PHSA Section 319\(e\) authorizes](#) the HHS Secretary, [upon gubernatorial request](#), to allow state, local, or tribal government employees who are supported by federal grants under any PHSA authority to work temporarily on the public health emergency response instead, without loss of funding. The PHSA provides authority, at least in part, for [eight agencies](#) and several offices in HHS, and their grant-making activities. The Section 319 declaration for Puerto Rico does not clarify which PHSA grants may be affected in this case.