



## ***PANDEMICS AND THE HOTEL INDUSTRY:***

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With the recent decision by WHO to raise the pandemic threat level from Phase IV to Phase V, it is only rational to be concerned about the problem and to activate your pandemic plan. Basic public health measures, including hand-washing, covering coughs, and staying home from work when sick remain absolutely essential, foundational steps. The value of gloves and masks is frankly debatable, and probably depends on how they are used, but the FDA recently gave approval to the purchase and use of N95 masks by the general public. The industry may well wish to consider stockpiling personal protective equipment such as these items. The general public will probably expect it, workers may demand it, and at least some protection may be provided. No one measure is apt to be a foolproof solution. Rather, taking rational, consistent steps, with constant attention and responsiveness to public health authority pronouncements, would seem to offer the best hope of minimizing the impact that the virus threatens to have.

Since we last addressed the pandemic issue, several potentially significant developments have transpired. First, both GSK (the maker of Relenza) and Roche (the maker of Tamiflu) have developed innovative options programs for corporate and other potential purchases. Although there are slight differences in details between the two programs, the similarities are more striking than the distinctions. At a cost of \$6.00 per person per year, an interested party can purchase the right to buy an antiviral drug at its average wholesale cost. The manufacturers represent that they will store the drug in a fashion protective of the potency of the agent, at the proper temperature, humidity, etc. They will also deliver drugs to the location of the purchaser's choice within 48 hours of order. No approach to this problem is perfect, including the options program. In particular, the \$6.00 per person per year expenditure does not buy medication; instead, it buys only the right to buy drugs. It does, however, solve storage and distribution problems and protects the purchaser's ability to procure pharmaceutical products at a time when demand is likely to be very high.

Second, various federal agencies have admonished both companies and individuals to procure a supply of antivirals. These admonitions lack the force of law. We know of no legal authority that imposes upon the hospitality or any other industry, or companies within it, a duty to take any specific action against pandemic, and certainly

none that requires that antivirals be purchased. Federal agencies do not make law merely by issuing guidance documents. Nevertheless, it seems clear that the government has now decided that stockpiling is a good idea. We can anticipate that, at least in certain circumstances, presumably only after the pandemic passes, ambitious plaintiffs' lawyers might attempt to utilize these pronouncements as evidence of a legally enforceable duty.

Finally, there has been some improvement in our understanding of the development of the resistance problem. Although a great deal remains to be learned, it seems that the development of resistance to antivirals is less predictable and more complex than that seen in the context of over-use of antibiotics. Antibiotics are used against bacteria; they have no usefulness against viral infections. Antivirals, as the name suggests, combat viruses but not bacteria. Based upon data from many parts of the world, it seems that resistance to Relenza, to date, remains very modest. Sporadically, resistance to Tamiflu may be a problem, but the appearance of resistance does not appear to be a simple function of the frequency of its use. In particular, in Japan, where Tamiflu is used more widely than it is anywhere else, resistance seems to be no more of a problem than it is in other countries. In Norway, for reasons that do not appear to be understood, a significant resistance problem that appeared two seasons ago substantially diminished last season. More important, the H1N1 organism appears to be susceptible to both drugs. In short, while we still need to be concerned about possible side effects of medication, and we need to be vigilant respecting resistance, there does not appear to be a clear scientific basis for withholding antivirals on the basis that using them excessively will pave the way to the emergence of resistant organisms.