

DOT Clarifies its Enforcement Policy Regarding Coronavirus

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The U.S. Department of Transportation (DOT) issued an “Enforcement Notice Regarding Denying Boarding by Airlines of Individuals Suspected of Having Coronavirus” (or COVID-19).

Under DOT’s regulations relating to individuals with disabilities, if a passenger is suspected to have a communicable disease, an airline may not limit transportation unless the passenger’s condition poses a “direct threat” to the health or safety of others. Although airlines are permitted to deny boarding based on a well-founded direct threat assessment, airlines must accept a medical certificate identifying alternative measures for preventing transmission, unless the airline cannot carry out the measures. An airline may require a passenger with a medical certificate to undergo additional medical review if there is a legitimate reason for believing that there has been a significant adverse change in the passenger’s condition since issuance of the medical certificate or that the certificate significantly understates the risk the passenger poses to the health of other persons on the flight.

In the case of COVID-19, the Enforcement Office acknowledges that medical certificates are unlikely to demonstrate whether a passenger is a direct threat, especially as there are no known measures that would prevent transmission of COVID-19 in the cabin’s closed environment. As a result, the Enforcement Notice notes the following.

Because the regulation is silent on whether airlines may (or may not) make the direct threat assessment through screening passengers directly, airlines may choose to do so for passengers seeking to travel to the United States from countries with travel health notices issued by CDC stemming from an outbreak of COVID-19 (currently China, South Korea, Iran, and Italy). The screening may consist of checking passengers’ temperature for fever prior to boarding or other measures that would help airline personnel determine whether an individual may have symptoms of COVID-19.

If an individual seeking to travel is found to have a fever or reports having a fever or has shortness of breath and an airline refuses boarding, DOT will use its enforcement discretion not to enforce the requirement that airlines must first ask for a medical certificate before denying boarding to that passenger.

DOT cautioned that its enforcement policy does not alter airline obligations to passengers who have their travel postponed, including:

- Providing a written explanation to the affected passenger as to the reason such travel was restricted, if requested, within 10 days of the request; and
- Allowing the affected passenger to travel at the original fare within 90 days of the date of the postponed travel; or
- Refunding the passenger for any unused flights if the passenger does not elect to travel at the same fare rate.



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