

Public Health Emergency Law

CDC Foundational Course
for Front-Line Practitioners
Version 3.0

Developed by the
Public Health Law Program
U.S. Centers for Disease Control and Prevention



Public Health Emergency Law: Course Overview

- Unit 1: Introduction to Emergency Management in the Federal System
- Unit 2: Emergency Powers: Protection of Persons
- Unit 3: Emergency Powers: Property and Volunteers



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Unit 1
Introduction to Emergency Management in the
Federal System



Disclaimer

These course materials are for instructional use only and are not intended as a substitute for professional legal or other advice. While every effort has been made to verify the accuracy of these materials, legal authorities and requirements may vary from jurisdiction to jurisdiction. Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.



Unit 1 Objectives

By the end of this unit, participants should be able to:

1. Define public health legal preparedness and outline the role of agencies' attorneys
2. Describe how emergency management operates in the federal system
3. Identify the basics of state and federal emergency declarations
4. Understand roles and legal authorities involved in comprehensive emergency response



Objective 1.1

Define public health legal preparedness and outline the role of agencies' attorneys



Public Health Preparedness Requires Public Health Legal Preparedness

- Key Components of Public Health Preparedness
 - A professional workforce competent in essential skills
 - Public health agencies that meet defined preparedness performance standards
 - Collaborative networks of agencies and partners
 - Modern information systems and laboratories
 - Agencies and partners that are legally prepared



Public Health Legal Preparedness Defined...

“Public health legal preparedness is a subset of public health preparedness” and is the “attainment by a public health system...of legal benchmarks essential to the preparedness of the public health system”



Public Health Legal Preparedness

-- Core Elements --

1. **LAWS:** Legal authorities based in science and on contemporary principles of jurisprudence
2. **COMPETENCIES:** Professionals who know their operating legal framework and how to apply law to public health goals
3. **COORDINATION:** In implementing law-based action across jurisdictions and sectors
4. **INFORMATION:** On public health law best practices



Key Actors in a Public Health Emergency Response

- Elected officials
- Public health directors
- Emergency management directors
- Law enforcement
- Legal counsel
- Judges



WHY DO WE NEED LAWYERS IN EMERGENCY PREPAREDNESS?

Participation in:

- Planning phase
- Response phase
- After-action phase



Role of the Agency Attorney: Before and During an Emergency

- Assure agency has necessary authority
- Assist development of emergency policies
- Anticipate and protect agency against legal liability
- Note: Action may be required even in the face of potential liability – goals are to:
 - Maximize effectiveness and minimize legal exposure
 - Recognize small liability concerns, but do not preclude necessary, common-sense responses



Role of the Agency Attorney: After an emergency

- Give legal advice to shape response and recovery actions
- Protect against potential litigation
- Ensure that after-action reviews determine how to:
 - Improve response procedures
 - Develop needed statutory and legal improvements
 - Identify needed law-related competencies



Objective 1.2

Describe how emergency management operates in the federal system



Constitutional Framework for Emergency Authorities

- The Constitution granted enumerated powers to the federal government:
 - Interstate commerce
 - National defense
 - Power to tax and spend for public welfare
- Powers not enumerated were “reserved” to states
 - Public health control powers are a subset of the police powers



The Federal System and Local Control

All emergencies start locally

- As scale / complexity increase, local governments request support from the state
- When situation is beyond capability of the state, the Governor may request aid from the President
- Catastrophic response triggers resources from:
 - Multiple jurisdictions and agencies
 - Multiple levels of government
- Unified command replaces local command

Result: A textbook example of federalism.



Public Health Powers within Our Constitutional Framework

- Surveillance
- Reporting
- Epidemiological investigation
- Vaccination (voluntary / involuntary)
- Isolation (voluntary / involuntary)
- Treatment (voluntary / involuntary)
- Other social distancing measures
- Evacuation
- Powers over property



Government Emergency Authority: The Disaster Cycle

Preparedness:

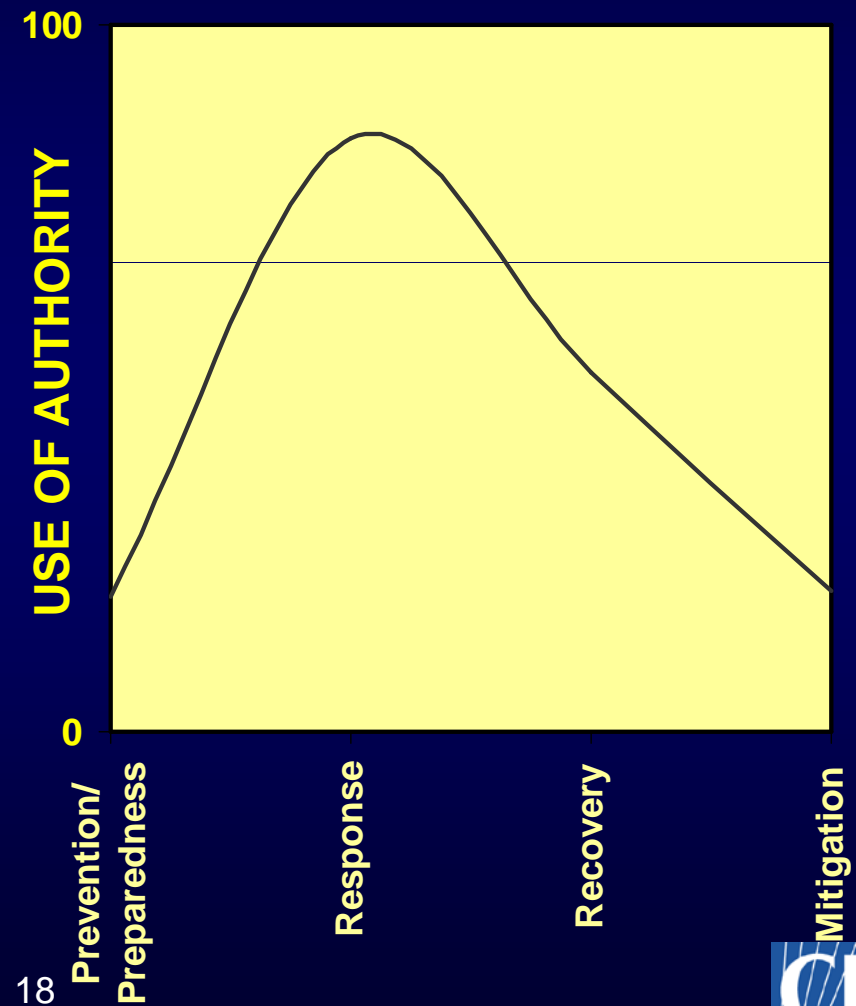
Concern over *what* measures to adopt and *who* should pay

Response:

Legal *authority is at its peak* and there are broad discretionary powers –to save lives & property

Recovery / Mitigation:

Attention shifts back to responsibility for costs, damages and losses



The State & Local Legal Control Powers

Remember the lessons of federalism:

The primary “police power” function, including public health control power, is reserved to the states under the U.S. Constitution’s 10th Amendment



Three Types of State / Local Public Health Control Laws

1. Older, broad residual powers for health officers to protect the community
2. Disease-specific control laws (e.g. STD, TB, HIV)
3. Emergency preparedness & management laws



State & Local Multiple Legal Powers Create Challenges

- “Old” state powers + “newer” specific laws + emergency management laws may all overlap
- All three types of laws may have separate implementing regulations and procedures
- Frequently all three reside in separate sections of state codes, which may cause confusion during emergencies



Objective 1.3

Identify the basics of state and federal emergency declarations



Public Health Emergencies can be triggered by ...

- Disease outbreaks and pandemics
- Natural disasters
- Technological disasters
- Intentional acts



What are Declarations?

- Public announcements
- Legal determinations
 - Special emergency grant by legislature through its powers over lawmaking and expenditure of funds
 - Made by an authorized government official
 - Trigger special emergency powers
 - Allow expenditure of emergency funds
 - Can be tailored to type of event (e.g., influenza pandemic, drought, fire)



Types of Emergency Declarations

- Declarations provide particular powers to particular governments and officials
- Multiple declarations are common
 - State level:
 - State of emergency and
 - Public health emergency
 - Federal level:
 - Public health emergency and
 - Stafford Act emergency or major disaster



State Declaration of Public Health Emergency

State law determines:

- What powers are conveyed
- Who can declare
 - Generally, governor or state public health officer
 - City / county council or mayor
 - Local public health officer
- Procedure / information required for declaration
- Duration of declaration
 - e.g., 60 days unless renewed



State Example

- Placeholder slide: instructor may insert one or more slides on state law governing declarations of emergencies



Declaration of Public Health Emergencies: State Example

Monkeypox outbreak – June 2003

- Disease spread to humans through contact with exotic pets (giant Gambian rats, prairie dogs)
- Illinois declared a public health emergency and Wisconsin issued an emergency order
 - To contain the outbreak through increased disease reporting and animal control measures



Governor's Declaration of State of Emergency

- Generally independent of a public health emergency and is based on sovereign police power
- Activates emergency plans and authorizes deployment and use of personnel
- May allow suspension of certain regulatory statutes
- Triggers special powers
 - To protect persons and control property
 - To request and obtain mutual aid from other states



Governor's Declaration of State of Emergency

- Natural Disasters
 - Northridge (CA) earthquake (1994)
 - North Carolina ice storm (2003)
 - Hurricane Katrina (2005)
- Terrorist Attack
 - 9/11/2001
- Pre-event declarations
 - “Pre-landfall” for hurricane evacuation



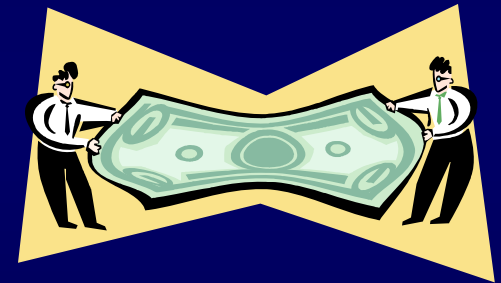
Federal Declarations of Public Health Emergency

- Secretary of HHS can declare “Public Health Emergency” under Section 319 Public Health Service Act
 - Emergency lasts for 90 days, unless earlier terminated, or extended, by Secretary
- Under declaration, Secretary “may take such action as may be appropriate to respond to the public health emergency”



The Federal Stafford Act

- Principal discretionary federal authority to assist state and local governments in responding to catastrophic events of any type
- Activated by a declaration of either
 - A major disaster or
 - An emergency
- Provides both authorities *and funds* for federal response and assistance to state / localities
 - Note: private sector generally not eligible for assistance



Applicability of Stafford Act to Public Health Emergencies

- Authorizes both direct federal assistance and contributions to state or local governments
- Stafford Act declaration allows federal government to mobilize and deliver:
 - Personnel
 - Equipment
 - Supplies
 - Facilities
 - Managerial, technical and advisory services



Stafford Act Declaration Procedure

- Governor must first request declaration
- Request must state:
 - Situation beyond capability of state and local governments
 - State's emergency plan activated
 - Specific nature of federal assistance requested
- DHS / FEMA makes recommendation to President based on severity
 - President alone decides



Example of State Request for Federal Emergency Declaration

- In Hurricane Katrina, Governors of Alabama, Louisiana, and Mississippi each made requests:
 - Pre-landfall – Federal emergency declaration for evacuation and other measures
 - Post-landfall – for Major Disaster Declaration
- Requests stated:
 - Capacity to respond had been exceeded
 - State emergency plan activated
 - Need for food, shelter, emergency supplies



Stafford Act

Unilateral Federal Powers

- Ability of federal government to act unilaterally
 - President CAN declare an emergency without request of state Governor IF:
“Primary responsibility rests with the United States because the emergency involves a subject area for which, under the laws of the United States, the United States exercises exclusive or preeminent authority.”
- Examples: Federal facilities, Tribal lands, nuclear materials, WMD / national defense



Example of Unilateral Federal Declaration of Emergency

Oklahoma City Federal Building bombing – 1995



- Initially a unilateral federal emergency declaration because federal facility was attacked and destroyed
- Governor requested the President to issue a major disaster declaration for the state



Stafford Act Declaration Response

- After a declaration, Stafford Act actions delegated to DHS / FEMA are coordinated through National Response Plan (NRP)
- Declaration authorizes use of federal resources *“in support of state and local assistance efforts”*
- Includes both direct federal assistance and contributions to state or local governments



Objective 1.4

Understand roles and legal authorities involved in comprehensive emergency response



Emergency Management Simplified

All emergencies are local.

- As scale / complexity increase, local governments request support from the state
- When situation is beyond capability of state, the Governor requests help from the President
- Catastrophic response triggers resources from
 - Multiple jurisdictions and agencies
 - Multiple levels of government



Federal Assistance

- DHHS Assistant Secretary for Preparedness and Response coordinates federal public health resources under NRP:
 - Public Health Service
 - Commissioned Corps; Reserve Corps
 - Civilian Agency Personnel
 - National Disaster Medical System (NDMS)
 - Veterans Administration
 - Federally organized volunteers
 - Citizen Corps
 - Medical Reserve Corps



Who Is Part of an Emergency Response?

- Local first responders
 - Police, fire, dept. of public works, utilities, public health
- State responders
 - State police, National Guard, DOT, environmental & health officials
- Federal responders
 - FEMA / DHS, Military (U.S. Army Corps of Engineers), civilian agencies (DOT, DOE, GSA, DHS, EPA, CDC, HHS)
- Private / non-profit / volunteer sector
 - Hospitals, health professionals, suppliers, NGOs



Who Is in Charge?

- National Incident Management System (NIMS)
 - Common vocabulary and command structure for incident management
 - Requirements for mutual aid
 - State and local governments must be certified for “NIMS compliance”
- National Response Plan (NRP)
 - Structures federal response to all types of events
 - Agreement between federal agencies



National Incident Management System (NIMS)

- Nationwide approach for incident management
- Requires federal, tribal, state, and local governments to work together before, during, and after incidents
- Involves preparing for, preventing, responding to, and recovering from domestic incidents
- Covers all causes, sizes, and complexities of incidents



National Response Plan (NRP)

- Provides framework for:
 - Federal interaction with tribal, state, and local governments; private sector; and NGOs
 - Domestic incident prevention, preparedness, mitigation, response, and recovery activities
- Describes capabilities and resources
- Establishes responsibilities, processes, protocols
- Signed by all cabinet agency secretaries



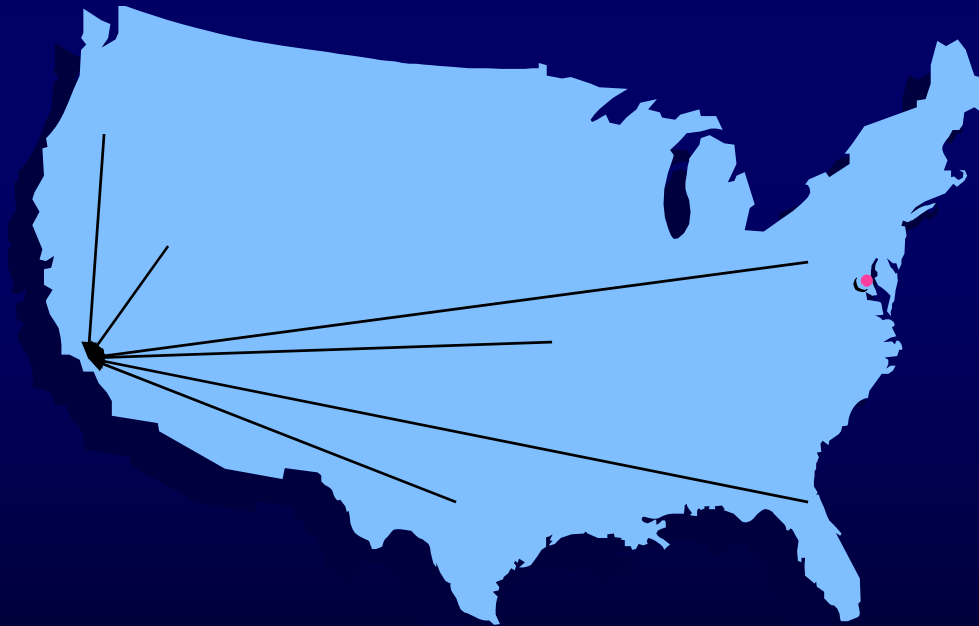
Pandemic and All Hazards Preparedness Act of 2006 (PAHPA)

- Incentives to state and local governments for pandemic and all hazards preparedness planning
- Requires DHHS to establish a national network to collect and analyze public health data
- Provides for programs for surge capacity
 - Registration of medical volunteers
 - Gives “intermittent federal employees”:
 - Liability protection
 - Workers’ compensation
 - Employment / re-employment protection



Requesting Health Resources: Mutual Aid

“Mutual Aid” is assistance rendered by one government entity to help another government entity respond to emergency conditions



Mutual Aid: Key Characteristics

- Written agreements covering:
 - Activation procedures
 - Response procedures
 - Liability, employment, and compensation issues
 - Federal reimbursement when appropriate
- “Voluntary” response
 - Does not “guarantee” assistance will be provided
 - Indicates willingness and ability to respond
 - Specifies terms, conditions, and procedures



Mutual Aid, NIMS, and Public Health

- Mutual aid is now a NIMS requirement
 - Jurisdictions must negotiate appropriate mutual aid agreements to receive federal preparedness funding (including HHS / CDC preparedness grants)
- Aid not restricted to personnel: jurisdictions can share and surge resources
 - Supplies, drugs, equipment, healthcare data, laboratory resources
 - Private sector personnel under contract
- Addressing liability and workers' compensation issues is particularly important in public health mutual aid agreements



Key Distinction: Mutual Aid

Small-scale vs. major responses

- “Operational” mutual aid agreements are common
 - Do not provide for compensation or direct reimbursement of small-scale incidents
- In most mutual aid agreements applicable to major responses, requesting jurisdiction reimburses the costs of the responding jurisdiction



Intrastate Mutual Aid

- Most states have formal “intrastate” emergency management compacts calling for compensation
- Draft “Model Intrastate Mutual Aid Agreement” available to states
- Most communities also have “operational” mutual aid agreements for day-to-day cooperation
- Agreements may include nongovernmental organizations such as for-profit, not-for-profit hospitals



Interstate and International Mutual Aid

U.S. Constitution:

“No state shall, without the consent of the Congress, ... enter into any agreement or compact with another state, or with a foreign power.”

- States can approach Congress to seek approval to enter into binding agreements with other sovereign states
- Cooperative arrangements / nonbinding agreements between states which do not encroach on federal authority may not constitute “agreements or compacts”
- Agreements may be valid under this clause without Congressional approval if they respect principles of federalism



Interstate Mutual Aid:

The Emergency Management Assistance Compact

- “EMAC” was approved by Congress in 1996
- Adopted by all 50 states and 3 territories, with implementing legislation



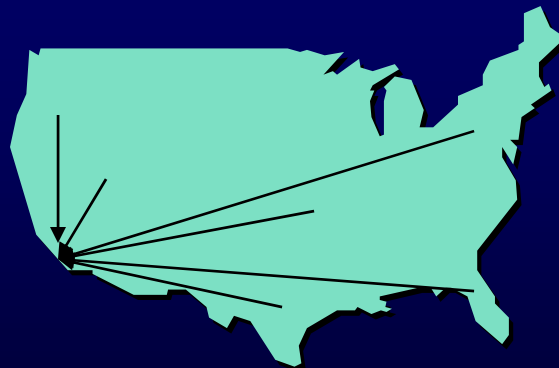
- EMAC enabled deployment of over 64,000 responders during Hurricane Katrina / Rita



Interstate Mutual Aid:

The Emergency Management Assistance Compact

- Assistance under EMAC triggered by:
 - State declaration of emergency
 - Member state requesting assistance
- Request routed to other member state(s) to fulfill the assistance



Interstate Mutual Aid: EMAC Cost Sharing

- Requesting state pays costs to “responding state”
 - Labor costs, material costs, contractor costs
- Federal government will reimburse costs paid to “responding state” IF:
 - President declared an emergency or disaster under Stafford Act AND
 - Costs are eligible “emergency measures”



International Mutual Aid

- Stafford Act encourages negotiation of agreements with neighboring countries
- Pre-disaster agreements are critical
 - Should include immigration, customs and credentialing issues
- **Examples:**
 - US - Mexico Border Health Commission Act
 - PNEMA (Pacific Northwest Emergency Management Arrangement)



Role of the Military

- Largest potential source of equipment, supplies, trained personnel in an emergency
- Stafford Act permits President to use military resources to:
 - Remove debris
 - Restore power in remote areas
 - Conduct search & rescue
 - Deploy special nuclear, biological & chemical (NBC) hazard teams
- Use of Department of Defense (DoD) resources subject to specific controls



Role of the Military: Requirements for Deploying Assets

- Approval of Secretary of Defense required
- Responses expedited through planning and pre-scripted mission assignments
- NRP requires use of the Incident Command System



Role of the Military: Limitations

- “Posse Comitatus Act”
 - The U.S. Armed Forces, including the National Guard if federalized by the President, cannot make arrests of civilians!
 - Exceptions:
 - When accompanied by a badged civilian law enforcement officer with arrest authority
 - U.S. military can enforce local or state quarantine in ports



Role of the Military: Implications of Federalizing

- Advantage of NOT federalizing National Guard:
 - Under the Emergency Management Assistance Compact (EMAC), National Guard activated by the Governor can be sent to another disaster state
 - National Guard units operating under state control can assist in maintaining public order during an emergency
- If National Guard is federalized, then it becomes “armed forces” of U.S. and is subject to the limitations of the Posse Comitatus Act



Role of the Military: Special Provisions for Deploying in Emergencies

- Insurrection Act: President can use U.S. military
 - At request of Governor to suppress insurrection
 - WITHOUT request of Governor when unlawful obstructions against the U.S. government make normal enforcement through judicial proceedings impracticable

This is controversial!



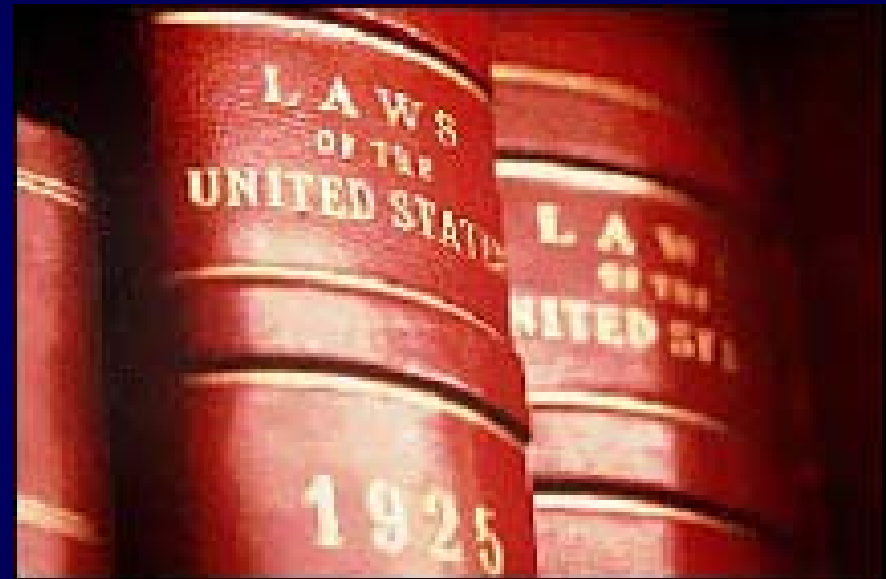
Unit 1 Summary and Key Take-Aways

1. Attention to “public health legal preparedness” and the role of agency attorneys has intensified substantially.
2. The legal aspects of emergency management reside within our complex federal system.
3. States, tribes and communities should be “legally prepared.”
4. Responses to significant public health emergencies hinge on coordination – a key component of legal preparedness – through NIMS and NRP.



End: Unit 1

For additional information on public health law and legal preparedness visit the *CDC Public Health Law Program*



www.cdc.gov/phlp

