



Drafting Legislation Related to State Pediatric Disaster Preparedness

The enactment of laws related to health care priorities is an important tool in public health improvement. Mandates ensure that public health issues and/or deficiencies are addressed state and territory-wide over the long-term, despite changes in government administration or public health policy priorities.

State and territory statutes are one type of mandate that can impact public health. When legislation is enacted, or signed into law, it is integrated into a state's statutory code, an official compilation of all of the laws passed by the legislature and currently in effect in a state or territory. Statutes, therefore, are codified, enforceable, and usually permanent laws.

Since most individuals may not have experience with drafting legislation, below are writing points that use, as examples, the recommendations from the National Commission on Children and Disasters (NCCD) related to improving pediatric disaster preparedness. These recommendations are meant to be a starting point for drafting a legislative proposal, as appropriate, not model legislation itself.

The executive summary of the recommendations from the National Commission on Children and Disasters: 2010 Report to the President and Congress can be found at: <http://www.ahrq.gov/prep/nccdreport/nccdrptsum.htm>. Given that the commission is a federal advisory body, "the recommendations are primarily directed toward the President, federal agencies, and Congress. However, to achieve a coordinated national strategy on children and disasters at all levels of government – including federal, state, tribal, territorial, and local – the Commission urges non-federal executive and legislative branches of government to consider and apply the recommendations, as appropriate."

State governments function similarly to the federal government, operating with legislative, executive, and judicial branches; the former two are usually most important in supporting a state public health initiative. The activities of these branches, however, are regulated by a state constitution and, therefore, differ from state to state. While the NCCD recommendations that follow are intended to guide your efforts, please keep in mind that state rules and procedures will affect the final content of your legislative proposal. You may want to speak with your department chief or legal counsel regarding these specific rules and processes.

Also keep in mind that a legislative proposal is just that – a proposal. The purpose is to put a concept to paper. Do not concern yourself with the technicalities of the draft; most likely, a state legislator will submit the proposal to the state's legislative counsel or the like, whose job it is to edit the proposal to ensure it complies with state rules and procedures.

In addition, many states or territories may already have laws in place related to, but not specifically corresponding to, pediatric disaster preparedness. For example, there may be a state law related to ensuring that health professionals who may treat patients during a disaster have disaster clinical or disaster services training, but not specifically pediatric training (NCCD recommendation 3.3). In this case, you may be able to amend existing law to add pediatric considerations as opposed to enacting a new law. If you are not familiar with the state's existing laws, consult with your department chief, state disaster planning agency, or a state organization concerned with disaster preparedness.

Writing Points

1 Give Authority. Within state or territorial government, a certain department likely has authority over disaster preparedness issues – perhaps a department of health, a department of public safety, an office of disaster preparedness, or some like entity. Since this department has legal obligations to carry out preparedness activities, it would be responsible for ensuring implementation of pediatric priorities, such as the NCCD recommendations. Assign the department this responsibility in the legislative language.

Depending on the issue, however, more than one entity may have jurisdiction over it. You may want to work with your department chief or legal counsel to identify all sources of authority over pediatric disaster preparedness. For example, NCCD recommendation 1.1 calls for the incorporation of education, child care, juvenile justice, and child welfare systems into disaster planning, training, and exercises. In mandating such a recommendation, you may need to consider giving joint authority to the department with primary authority over disaster preparedness along with the departments responsible for the named interests.

2 Use Mandatory Language and Enforce the Law. Ensure that the department(s) or other entity is required to implement pediatric disaster preparedness priorities. Use words such as “shall” and “required” (mandatory) instead of words such as “may” or “permit” (permissive). Permissive language gives the state the option to implement, or not implement, the priorities. In addition, include an enforcement clause and establish penalties for not following the law. A mandate without an enforcement mechanism can be meaningless.

3 Start with the NCCD Recommendations. Use each appropriate recommendation as the basis for drafting the substance of the legislative proposal, which outlines specifically what the department is to do. You will, however, need to adjust the content according to the state’s disaster preparedness system and terminology. For example, if the state does not use the terms Basic Life Support (BLS) or Advanced Life Support (ALS) vehicles (recommendation 4.2), among other terms, you will need to substitute the appropriate, corresponding language.

4 Consider Future Changes. When drafting content, be specific but not too specific; the legislative proposal should mandate each pediatric disaster preparedness priority but leave room for future changes. It is easier to draft a flexible proposal now than it is to amend a very specific legislative mandate in the future.

In fact, state legislatures sometimes pass laws that are purposefully lacking in detail, leaving it to the state’s various executive branch agencies to come up with the specifics of the law through rules and regulations, including how the laws are to be put into practice. For example, a state legislature may pass a law giving the state’s department of health broad authority to improve pediatric disaster preparedness; the department then drafts specific initiatives to improve such care.

Executive agencies publish proposed regulations in a public document, sometimes called a register or administrative bulletin, and allow for a public comment period. (To locate an online version of this document, search for “name of state” and “administrative register,” “government register,” or “administrative bulletin.”) At the end of this period, an agency will consider the comments and publish a final regulation on the issue. Note that many state legislatures can act to overturn a regulation through the legislative process.

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To lobby is to seek to influence the introduction, passage, amending, or defeat of legislation.

For more information, please consult the EMSC National Resource (NRC) publication *Public Policy Primer: A Guide on the Legislative Process and Impacting Change at the Federal, State, and Local Levels* (http://www.childrensnational.org/files/PDF/EMSC/PubRes/Public_Policy_Guide.pdf) or contact the EMSC NRC at (202) 476-4927.