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Public Health Emergency Legal Preparedness Checklist
Local Government Public Health Emergency
Legal Preparedness and Response

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- A. Introduction.** This is one of three checklists prepared by the *Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities (Center)* for voluntary use by county, city, state, and federal public health agencies in assessing their legal preparedness for public health emergencies. In this context, public health emergencies include bioterrorist and other intentional attacks, emerging infectious disease epidemics, natural disasters, and other events with potentially catastrophic impacts on human health.
- B. Background.** State, county, and city public health departments are the front line of the Nation's defense against a wide spectrum of public health emergencies. Following the terrorist attacks of September 11, 2001, and the immediately ensuing anthrax attacks, these agencies have acted decisively to strengthen their public health emergency response capacity. In partnership with the Centers for Disease Control and Prevention (CDC), other federal agencies, and national public health organizations, they have bolstered their disease surveillance and investigation abilities, built new telecommunications and laboratory testing capacity, trained staff in advanced emergency response skills, developed joint operating protocols with emergency management agencies, and taken action on additional, related fronts.

Legal preparedness is an integral part of comprehensive preparedness for public health emergencies. To assess their existing legal preparedness, state health departments have made extensive use of the draft Model State Emergency Health Powers Act, researched and published in December 2001 by the *Center* at the request of CDC.

Ongoing contact with state and local public health agencies indicated they could find additional tools helpful in assessing their public health emergency laws. Following consultation with the Association of State and Territorial Health Officials (ASTHO) and the National Association of County and City Health Officials (NACCHO) in 2003, CDC requested the *Center* to prepare checklists that public health agencies could use, at their own initiative, to assess three especially important components of their legal preparedness as follows:

1. Interjurisdictional legal coordination for public health emergency preparedness;
2. Local public health emergency legal preparedness and response; and
3. Civil legal liability related to public health emergencies.

All three checklists are accessible through the *Center's* website at www.publichealthlaw.net/Resources/BTlaw.htm. The checklists are in the public domain and may be duplicated and disseminated freely.

- C. Methods.** *Center* faculty researched and developed the checklists through a deliberative process that included legal research and analysis of agencies' functional roles in public health emergencies, review of public health emergency preparedness plans, and communication with public health practitioners and legal counsel. The principal authors are Jason W. Sapsin, JD, MPH, *Center* Scholar (jsapsin@jhsph.edu) (interjurisdictional checklist); James G. Hodge, Jr., JD, LLM, *Center* Executive Director (jhodge@jhsph.edu) (local checklist); and Lance A. Gable, JD, MPH, *Center* Senior Fellow (gable1@law.georgetown.edu) (liability checklist.)

The checklists are offered as tools to facilitate review of public health agencies' practical public health legal preparedness. While intended to cover many aspects of the three selected focal areas, users may tailor the checklists to their own priorities and objectives.

- D. Organization.** The checklists present questions and comments that relate to specific legal aspects of emergency preparedness and response operations. Each checklist document contains two principal sections: (1) A "Quick Reference," that lists the checklist's questions; and (2) the detailed checklist with an introduction to the issues it addresses and explanatory comments or suggestions provided for each question.

These sections are organized according to the four phases of incident management found in the National Response Plan: Prevention, Preparedness, Response, and Recovery. This common framework has been widely adopted by the emergency response and public health communities. Within each phase, questions are further organized into subcategories (e.g., Property, People, Data Sharing, Responders, and Private-Sector Entities) that differ in each checklist according to the subject matter. The local public health emergency preparedness checklist includes cross-references to provisions of the draft Model State Emergency Health Powers Act. Each checklist also includes endnotes with references to publications, laws, judicial rulings, and other sources.

- E. Suggestions for Use.** The checklists are designed for self-initiated use by public health officials, their legal counsel, and their public- and private-sector partners. The *Center* suggests that users view the checklists as guides to reviewing the key legal issues within each topical area. Review is likely to lead to additional questions within specific agencies and jurisdictions. The value of the checklists may be enhanced through a collaborative review process that involves a team or committee whose members represent the multiple operational and legal perspectives critical to effective emergency preparedness and response. This approach could have the additional benefit of stimulating enduring partnerships and mutual understanding of the legal framework for emergency response.
- F. Disclaimer.** The *Center* offers the checklists merely as aids to review and analysis of legal issues related to public health emergency preparedness and response. The checklists are not, and should not be used as, legal advice. Public health agencies should consult their legal counsel for legal advice.

The CDC Public Health Law Program provided financial support for the *Center's* research and development of the checklists under CDC cooperative agreement U50/CCU323385. ASTHO and NACCHO staff reviewed and commented on drafts of the checklists. The checklists, however, do not necessarily represent the official views of CDC, ASTHO, or NACCHO or members of these entities.

G. For More Information. More information about the three checklists and other resources related to public health's legal preparedness for public health emergencies are available from the *Center* (www.publichealthlaw.net), ASTHO (www.astho.org), NACCHO (www.naccho.org) and the CDC Public Health Law Program (www.phppo.cdc.gov/od/phlp). All four organizations welcome requests for information and feedback on the checklists and their application. For additional information about the checklists, please contact the specific authors noted in C., above, or James G. Hodge, Jr., J.D., LL.M., Executive Director, *Center for Law and the Public's Health* at jhodge@jhsph.edu; or Anthony Moulton, Ph.D., Co-Director, CDC Public Health Law Program at adm6@cdc.gov.

Quick Reference:

Local government public health emergency legal preparedness and response

Subject Category	Checklist Question	√
I. Prevention		
A. Facilities	1. Are local health officials responsible for designating storage and housing sites in their jurisdictions during a public health emergency?	
B. Responders	2. Who are the legally responsible persons for coordinating public health emergency responses at the local level of government?	
	3. Who is the local government legal representative responsible for coordinating efforts with federal or state authorities to prevent or respond to a public health emergency?	
C. Processes	4. What are the legal responsibilities and powers of local public health emergency planning committees?	
	5. What processes is the local government required to fulfill in creating or administering a local public health emergency plan?	
	6. What are the additional legal requirements concerning local government participation in regional, state-wide, or federal emergency preparedness plans?	
II. Preparedness		
A. Physical Resources	7. What resources are available from federal and state governments to assist with emergency prevention and preparedness?	
	8. From what sources are local officials legally authorized to obtain and/or seek funding?	
B. Data Management	9. What are the surveillance requirements for local public health systems related to identifying potential agents or outbreaks that may lead to a public health emergency?	
	10. Are state and local public health officials required or permitted to share information?	
	11. What are the legal requirements for non-governmental entities (e.g., health care providers) to participate in reporting and surveillance efforts on a local level?	
C. Responders	12. Who must be legally notified at the local, state, or federal levels if an infectious disease outbreak or other indices of an public health emergency is suspected or confirmed?	
	13. Do local authorities have adequate legal authority to develop and implement public health emergency training exercises?	

Subject Category	Checklist Question	√
	14. Can local public health authorities investigate potential indices of a public health emergency independently from state or federal public health authorities?	
	15. What legal responsibilities do local authorities have to communicate with and notify the public independent of state authorities?	
D. Cross-cutting	16. What evidence (or criteria) is legally sufficient for local agencies to initiate a response to a potential outbreak?	
III. Response		
A. Facilities	17. Can local officials compel evacuation of a given area?	
	18. Can local authorities abate nuisances (whether they are defined in state statute, state regulation, or local ordinance) contributing to a public health emergency?	
	19. Can local officials condemn, remove, or destroy real or personal private property?	
B. Physical Resources	20. Can local officials use materials, facilities, and other private property in responding to a public health emergency?	
	21. Can local officials ration and prioritize the distribution of health care supplies?	
C. Responders	22. What role, if any, do local health officials play in the declaration of a public health emergency on a local or state-wide basis?	
	23. Can local officials institute quarantine and isolation?	
	24. Can local officials impose curfews or travel restrictions on the public in the event of an emergency?	
	25. Can local officials compel vaccination and/or treatment of individuals?	
D. Private Sector Entities	26. Can local officials direct health care providers and assign them additional responsibilities (such as the performance of medical exams or tests) during emergencies?	
E. Data Management	27. What are the legal requirements for local health officials regarding access to and disclosure of identifiable health information that may differ from non-emergency provisions?	
F. Processes	28. What are the legal procedures (administrative, judicial) required of local officials to institute quarantine and isolation?	
	29. Can local public safety officials enforce a quarantine or isolation order without judicial authorization (such as a warrant) if an individual subject to the order refuses to comply?	
G. Cross-cutting	30. What are the legal requirements of local officials to protect individual civil rights or respect religious beliefs in public health emergencies that may differ from non-emergency protections?	
	31. What are local officials' legal duties in the event that martial law is declared by the Governor?	
	32. What powers and duties are specifically granted to other governmental officials to respond to public health emergencies?	
	33. When can local public health officials request or require assistance from local law enforcement or emergency management agencies?	
IV. Recovery		
	34. What legal responsibilities do local officials have regarding the disposal of infectious waste and human remains post-emergency?	
	35. What role do local health officials play in monitoring the transportation and disposal of hazardous materials post-emergency?	
	36. What legal responsibilities do local officials have to maintain or reinstate the local judicial system in the event of an emergency?	
	37. Is local government responsible for coordinating and providing mental health services following a public health emergency?	

Checklist: Local Government Public Health Emergency Legal Preparedness and Response

Overview: Since September 11, 2001, substantial scholarly and applied work by the *Center*, CDC PHLIP, ASTHO, NACCHO, and others has focused on public health emergency preparedness at the state level of government. The *Center's* draft MODEL STATE EMERGENCY HEALTH POWERS ACT was prepared for review and consideration by legislatures and executive agencies at the state level, although some larger local governments have utilized the draft Act.

Although *Center* faculty have worked closely with local government public health officials (e.g. in the cities of Baltimore, Chicago, Los Angeles, New York, Washington, D.C., among others), additional efforts are needed to address specific legal issues on public health legal preparedness faced by the thousands of local governments. Local governments (e.g., counties, boroughs, cities, special districts) owe their existence to state governments, and vary in size, complexity, governance, and power. The legal needs of local governments may be similar across states or within them, but the significant diversity of these governments complicates the development of a model approach through legislative or regulatory provisions for public health emergency preparedness.

For the purposes of this checklist, *local public health legal preparedness* refers to those legal powers and authorities required for local governments to prevent or respond effectively to bioterrorism, other types of terrorism, infectious disease outbreaks, and other potentially catastrophic public health emergencies. This checklist presents an assessment tool that is primarily intended for use by local governments to assess their legal preparedness for public health emergencies. It adopts a multi-sectoral approach, assessing the sorts of authority needed at the local level that involve public health agencies and their public and private sector partners.

Subject Category	Checklist Question	MSEHPA Section ¹	Commentary
I. Prevention			
A. Facilities	1. Are local health officials responsible for designating storage and housing sites in their jurisdictions during a public health emergency?	202(a)(3) 202(a)(13) 502(a)	Responsibility for making these designations may vest in local authorities via their home rule emergency powers or plans, or be relegated to local authorities via state public health emergency laws ² and state or local public health emergency response plans. ³ Determining whether local authorities are responsible for these designations is important; equally vital is the fulfillment of these functions through local planning or other mechanisms.
B. Responders	2. Who are the legally-responsible persons for coordinating public health emergency responses at the local level of government?	202(a)(2) 202(a)(13) 403(b)	Although many larger local governments may have established emergency preparedness teams, smaller municipalities likely have not. No matter the size, determining who is legally-responsible for coordinating actual public health emergency responses locally is an essential issue that may be tied to state laws or emergency plans or local ordinances or plans. ⁴
	3. Who is the local government legal representative responsible for coordinating efforts with federal or state authorities to prevent or respond to a public health emergency?	202(a)(2) 403(b)(2) 403(b)(3)	As with question #2, many state and local governments legally designate a representative to coordinate public health emergency response and prevention efforts with other governments. ⁵ This local representative (e.g., emergency team leader) may not be the same person who coordinates actual responses (e.g., mayor, county executive). ⁶

Subject Category	Checklist Question	MSEHPA Section ¹	Commentary
C. Processes	4. What are the legal responsibilities and powers of local public health emergency planning committees?	Article II 201 202	Local governments, like their state counterparts, may establish planning committees for a host of emergencies, including natural disasters, HAZMAT, nuclear, terrorism, and some specific, jurisdictional threats (e.g., hurricanes). In larger local governments, public health emergency committees may be established by local or state orders. ⁷ Assessing the decision-making and enforcement powers of these committees prior to and during a public health emergency improve coordination efforts with existing committees, responsible persons, and others.
	5. What processes is the local government required to fulfill in creating or administering a local public health emergency plan?	Article II 201 202	For local governments required to develop a public health emergency plan by local or state order, various processes may be designated. These may include designation and appointment of key members of the committee, open records requirements, legislative review at the local or state levels, and formal adoption by local or state entities. ⁸ Even after completion, plan administration may require additional, ongoing processes (e.g. routine updating or monitoring).
	6. What are the additional legal requirements concerning local government participation in regional, state-wide, or federal emergency preparedness plans?	403(a) 403(b)	Supplementing the need to develop local plans, state or federal public health or emergency preparedness officials may require local authorities to contribute to their state or federal public health emergency plans. ⁹ In some cases, these contributions may be tied to resource disbursements targeted for preparation and response efforts. These legal requirements vary extensively based on location, size, and governmental structure.
II. Preparedness			
A. Physical Resources	7. What resources are available from federal and state governments to assist with emergency prevention and preparedness?	202(a)(2) 403(a)	Federal and state governments (sometimes as pass-through agents for federal funds) may have resources available to assist in public health emergency prevention and preparedness. ¹⁰ These can include resources to improve public health surveillance systems, hire new personnel, supplement training of existing personnel, and address other needs. Many local authorities already receive these resources; others may be unaware or unable to secure adequate federal or state resources for many reasons. Cataloguing resources and their availability facilitates local government pursuit of these funds.
	8. From what sources are local officials legally authorized to obtain and/or seek funding?	403(a)	In addition to question #7 is the related issue of authorization for local officials to obtain or seek funding for public health emergency prevention and preparedness. Some local authorities may be able to use existing resources, generate new funds through local taxes, or seek federal funds directly without state approval. ¹¹ Other local governments may be limited in these and other mechanisms because of restrictive state laws or federal grant requirements. ¹²

Subject Category	Checklist Question	MSEHPA Section ¹	Commentary
B. Data Management	9. What are the surveillance requirements for local public health systems related to identifying potential agents or outbreaks that may lead to a public health emergency?	302(a) to (d)	Federal, state, or local public health reporting requirements, often set forth in statutory or administrative laws, typically designate public health surveillance requirements for local officials to follow in identifying potential agents or outbreaks that may indicate a public health emergency. ¹³ These legal requirements can include a list of specific agents to report for purposes of bioterrorism detection or prevention of emerging infectious conditions.
	10. Are state and local public health officials required or permitted to share information?	303 607(a) 607(b)	Sharing of information between state or local public health officials is critical to prevent or prepare for a public health emergency, and is typically required by state or local public health reporting requirements. ¹⁴ Data sharing may cross local or state boundaries; in some cases, bordering cities or counties in 2 different states may need to routinely share data. Whenever data sharing involves identifiable health information, local governments may need to examine state or local health information privacy laws to gauge their authority to exchange data for public health purposes consistent with these laws. ¹⁵
	11. What are the legal requirements for non-governmental entities (e.g., health care providers) to participate in reporting and surveillance efforts on a local level?	301	Federal, state and local reporting requirements, which are found in statutory or administrative laws, typically provide specific requirements for health care providers and other non-governmental entities. ¹⁶ These legal requirements list certain reportable illnesses and health conditions and the manner through which they should be reported. Many of these requirements refer to local tracking and surveillance activities.
C. Responders	12. Who must be legally notified at the local, state, or federal levels if an infectious disease outbreak or other indices of a public health emergency is suspected or confirmed?	301(a) 301(c) 303(a) to (c)	Reporting requirements usually require that specific persons or entities be notified of reportable illnesses, diseases, or other information that may be suspected indices of a public health emergency. These persons may include the local health commissioners, board of health, state commissioner, or directors of health departments, laboratories, or emergency management agencies. ¹⁷ In some cases, federal officials may need to be directly notified as well.
	13. Do local authorities have adequate legal authority to develop and implement public health emergency training exercises?		Public health emergency training exercises are often required and specified through state or local public health emergency plans ¹⁸ that grant local authorities the ability to develop and implement public health emergency training exercises. These training requirements may also be tied to resource allocations.
	14. Can local public health authorities investigate potential indices of a public health emergency independently from state or federal public health authorities?	302 303(a)	Requirements and restrictions regarding investigations of public health emergencies typically appear in federal or state statutes or administrative laws, or in state or local public health emergency response plans. ¹⁹ These laws and plans may allow local public health authorities to investigate potential public health emergencies within their jurisdictions, but might also require deference to state or federal investigations under certain circumstances.

Subject Category	Checklist Question	MSEHPA Section ¹	Commentary
	15. What legal responsibilities do local authorities have to communicate with and notify the public independent of state authorities?	202(a)(1) 701(a)	Typically, state statutes or administrative regulations regulate the dissemination of information to the public in the event of a public health emergency, and could require that local authorities communicate with the public if a local public health emergency occurs. Additionally, state or local public health emergency response plans may provide specific requirements for notification and communication with the public. ²⁰
D. Cross-cutting	16. What evidence (or criteria) is legally sufficient for local agencies to initiate a response to a potential outbreak?	104(m)	Procedures for investigating and tracking potential outbreaks are often delineated in state statutes, administrative regulations or state or local public health emergency response plans. ²¹ These may include standards, or bases, on which a local agency is allowed to initiate responses to potential outbreaks. ²² These may be specified in the definition or conception of public health emergency [as in MSEHPA], or be authorized upon the declaration of an emergency. Criteria for the declaration of a public health emergency are included in many state's statutes regulating the state's emergency response system. ²³
III. Response			
A. Facilities	17. Can local officials compel evacuation of a given area?	501(a) 501(d)	Regulations granting local public health officials the power to compel evacuation of a given area in response to a public health emergency may be included in state statutes ²⁴ or administrative regulations regarding emergency response, or in a state or local public health emergency response plan. Performance of evacuations may be coupled with specific notice and other procedures designed to protect the public's health while respecting individual rights and freedoms.
	18. Can local authorities abate nuisances (whether they are defined in state statute, state regulation, or local ordinance) contributing to a public health emergency?	Article V	Local public health officials may have the power to abate nuisances contributing to a public health emergency. These powers may be included in state statutes, ²⁵ administrative regulations, local ordinances, or state or local public health emergency response plans. Nuisance abatement must be performed consistent with advance or forthcoming due process protections, and may require specific additional measures to investigate and substantiate the existence of the nuisance.
	19. Can local officials condemn, remove, or destroy real or personal private property?	Article V 506	Absent finding a public health nuisance, local public health officials' condemnation, destruction, or removal of real or personal private property will likely constitute a taking under constitutional principles, and thus require compensation to property owners. Compensation may be provided for after the fact (in many cases of emergency), and may be limited by state statutes or local ordinances. ²⁶
B. Physical Resources	20. Can local officials use materials and other private property in responding to a public health emergency?	Article II 202(a)(3) 501 502 505	Regulations regarding the use of materials, facilities and other private property during emergency responses may grant local public health officials some authority to utilize private property under varied criteria. Virtually any use of private property for public purposes implicates constitutional takings protections, ²⁷ (as noted in question # 19) unless the use of the property constitutes a public health nuisance (as noted in question # 18).

Subject Category	Checklist Question	MSEHPA Section ¹	Commentary
	21. Can local officials ration and prioritize the distribution of health care supplies?	505(b)-(d)	Local power to ration and prioritize the distribution of health care supplies in response to a public health emergency may be allowed via state statutes, administrative regulations, state or local public health emergency response plans, or local ordinances. In many states, this power is assumed by state authorities to ensure uniform controls, ²⁸ though larger local governments may share similar powers.
C. Responders	22. What role, if any, do local health officials play in the declaration of a public health emergency on a local or state-wide basis?	401 402	Typically, state statutes set procedures through which a state or local public health emergency must be declared. ²⁹ While such emergencies are most often declared by the Governor (or other politically accountable figure at the state level), the input of local public health officials may be sought during the declaration process, particularly for public health emergencies within local borders. Additionally, local officials may be authorized to declare a local public health emergency through state statutes, administrative regulations, or emergency response plans. ³⁰
	23. Can local officials institute quarantine and isolation?	604	Regulations granting local public health officials the authority to institute quarantine and isolation in response to a public health emergency are found in state or local laws or plans. ³¹ Quarantine and isolation are among the most individually-restrictive powers of government during an emergency. As a result, authority to implement these powers should be well-grounded, provide flexible routes for their accomplishment, and reflect principles of due process that can be accommodated within reasonable proximity to the exercise of these powers. ³²
	24. Can local officials impose curfews or travel restrictions on the public in the event of an emergency?	502(d) 601	The imposition of curfews or travel restrictions may assimilate voluntary quarantine or isolation measures or evacuation powers, but might also be authorized under other statutory or regulatory laws. ³³ These temporary powers are designed to protect the public's health through means that are as non-intrusive as possible. In some jurisdictions, state or local public safety authorities may be specifically authorized to conduct these measures instead of public health authorities.
	25. Can local officials compel vaccination and/or treatment of individuals?	603	Vaccination and/or treatment of individuals during a public health emergency through local officials may be critical interventions to abate the conditions contributing to the emergency. ³⁴ Still, these powers are most often framed in voluntary terms. Thus, public health officials may offer vaccination or treatment programs and provide strong incentives for public participation, but the programs remain voluntary. As in MSEHPA, quarantine and isolation are usually the only public health powers for which applicable members of the public may have to comply.

Subject Category	Checklist Question	MSEHPA Section ¹	Commentary
D. Private Sector Entities	26. Can local officials direct health care providers and assign them additional responsibilities (such as the performance of medical exams or tests) during emergencies?	608(a) 608(b)	Many states have statutorily addressed whether private health care providers may be directed and assigned public health responsibilities during emergencies. ³⁵ In some cases, the health care providers' performance (or refusal) is tied to their licensing status in the state. In other cases, additional penalties may result. Alternatively, health care workers may volunteer during emergencies pursuant to national or state-based volunteer systems and plans.
E. Data Management	27. What are the legal requirements for local health officials regarding access to and disclosure of identifiable health information that may differ from non-emergency provisions?	607	Federal, state and/or local regulations, ³⁶ including the federal Privacy Rule, ³⁷ delineate specific requirements for the use and disclosure of identifiable health information, including during a public health emergency. Additionally, state statutes, administrative regulations and response plans specifically related to public health emergencies may contain additional requirements. ³⁸ Whenever data sharing involves identifiable health information, local governments may need to examine federal, state, or local health information privacy laws to assess their capability to exchange data for public health purposes.
F. Processes	28. What are the legal procedures (administrative, judicial) required of local officials to institute quarantine and isolation?	605	If local public health officials are empowered to institute quarantine and isolation through state ³⁹ or local laws or plans, legal procedures should be delineated. These procedures may spell out the types and conditions of quarantine or isolation, due process protections, and coordination with public safety authorities.
	29. Can local public safety officials enforce a quarantine or isolation order without judicial authorization (such as a warrant) if an individual subject to the order refuses to comply?	404 605	As noted in question #28, local public health officials may need to coordinate with public safety officials in the enforcement of non-voluntary quarantine or isolation orders. State or local laws may prescribe the manner for seeking this assistance, as well as whether the public safety authority is authorized to enforce the order absent judicial approval in cases on noncompliance. ⁴⁰
G. Cross-cutting	30. What are the legal requirements of local officials to protect individual civil rights or respect religious beliefs concerning public health emergencies that may differ from non-emergency protections?	202(a)(14) 504(c) 604(b)(8) 701(b) 701(c)	Legal requirements of local public health officials to protect individual civil rights or respect religious beliefs or choices in the event of a public health emergency may be expressed in a variety of ways. Federal and/or state statutes may require respect for individual rights related to compulsory medical treatment, vaccination, quarantine and isolation, testing, and health information privacy. State and/or local public health emergency response plans may also mandate respect for individual beliefs or liberties. These legal requirements may assimilate protections during non-emergencies, but might also spell out specific requirements for public health emergencies.
	31. What are local officials' legal duties in the event that martial law is declared by the Governor?	403(a)	Typically, the declaration of martial law by the Governor is regulated via state statutes. If martial law is declared in response to a public health emergency, local officials may be required to perform certain duties under a state or local public health emergency response plans that deviate from standard roles and responsibilities during emergencies.

Subject Category	Checklist Question	MSEHPA Section ¹	Commentary
	32. What powers and duties are specifically granted to other governmental officials to respond to public health emergencies?		The powers and duties of many governmental actors outside of public health officials may be important components to comprehensive local government public health emergency responses. ⁴¹ These may include local public safety departments, fire departments, local environmental agencies, transit authorities, and local departments of education. These entities and their personnel may serve as first responders to emergency circumstances through EMS or other functions, provide critical support, services, information, or facilities to public health officials, or assist in the provision of needed services to the populations. An assessment of their legal responsibilities through planning or other mechanisms is thus important to local public health emergency response.
	33. When can local public health officials request or require assistance from local law enforcement or emergency management agencies?	404	Many state statutes allow public health authorities to request or require assistance from law enforcement authorities or emergency management agencies when necessary to protect the public's health. ⁴² State statutes or regulations may also allow local public health officials to request such assistance as legally necessary. Additionally, state or local public health emergency response plans may permit public health officials to request or require such assistance. ⁴³
IV. Recovery			
A. Responders	34. What legal responsibilities do local officials have regarding the disposal of infectious waste and human remains post-emergency?	503 504	Local public health officials may be required to participate in the disposal of infectious waste and human remains through state statutes or administrative regulations, state or local public health emergency response plans, ⁴⁴ or written policies, plans, contracts, or agreements. These laws may provide specific measures and procedures to follow to facilitate safe and responsive handling.
	35. What role do local health officials play in monitoring the transportation and disposal of hazardous materials post-emergency?	503 504	Transportation and disposal of hazardous materials (as defined at the federal level or in each state through environmental protection laws) are typically assigned to state environmental authorities. However, local public health officials may have specific roles for the transportation of these materials to protect the public's health as delineated in statutory or regulatory laws, ⁴⁵ written policies, plans, contracts, or agreements.
	36. What legal responsibilities do local officials have to maintain or reinstate the local judicial system in the event of a public health emergency?	202(a)(5)	The maintenance of a local judicial system in the event of a public health emergency is essential to appropriate and adequate response efforts and the protection of individual rights to due process and other protections. State and local public health emergency response plans, ⁴⁶ state statutes, or administrative regulations may require the maintenance of a judicial system on the state and local level during an emergency response. Use of electronic forms of communication, including video, web-based, or teleconferencing, may need to be addressed to assure that judicial processes continue in the event of widespread public health emergencies.

Subject Category	Checklist Question	MSEHPA Section ¹	Commentary
	37. Is local government responsible for coordinating and providing mental health services following a public health emergency?	702	Provision of mental health services to the general public may be necessitated by the exigencies of the circumstances, and may be required by state ⁴⁷ or local ⁴⁸ emergency response plans, regulations, or statutes. ⁴⁹ Local coordination of these services may be needed to ensure adequate access to mental health services within the jurisdiction.

References:

¹ For a copy of the *Center's* draft Model State Emergency Health Powers Act (MSEHPA), please see our *Center* website at www.publichealthlaw.net/Resources/Modellaws.htm

² See, e.g., LA. REV. STAT. ANN. § 29:764(A)(3) (West 2003).

³ See District of Columbia Community Emergency Management Plan, Cluster 1, at: http://dcema.dc.gov/dcema/frames.asp?doc=/dcema/lib/dcema/pdf/cluster_1.pdf

⁴ See, e.g., GA. CODE ANN. § 36-75-5 (2003).

⁵ See, e.g., 20 ILL. COMP. STAT. § 2310/2310-50.5.

⁶ See, e.g., GA. CODE ANN. § 36-75-4 (2003).

⁷ See, e.g., ARIZ. REV. STAT. § 26-345 (1989).

⁸ See, e.g., NEB. REV. STAT. § 81-15, 217 (1997).

⁹ See, e.g., CAL. HEALTH & SAF. CODE § 1797.152 (1989).

¹⁰ See, e.g., CAL. HEALTH & SAF. CODE § 101230 (Deering 1995).

¹¹ See, e.g., GA. CODE ANN. § 36-75-7 (2003).

¹² See, e.g., CAL. HEALTH & SAF. CODE § 101315 (Deering 2002).

¹³ See, e.g., 20 ILL. COMP. STAT. § 2305/2.1.

¹⁴ See, e.g., N.J. STAT. ANN. § 26:4 - 24.

¹⁵ James G. Hodge, Jr., Erin Fuse Brown, and Jessica P. O'Connell, *The HIPAA Privacy Rule and Bioterrorism Prevention, Planning, and Response*, 2:2 BIOSECURITY AND BIOTERRORISM 73 (2004).

¹⁶ See, e.g., N.J. STAT. ANN. § 26:4 - 15.

¹⁷ See State of California Bioterrorism Surveillance and Epidemiologic Response Plan, at: http://www.dhs.ca.gov/ps/dcdc/bt/pdf/CA_BT_Surv_Epi_Plan-2002b.pdf (January 2002).

¹⁸ See, e.g., Cambridge Public Health Department Emergency Operations Plan, Cambridge Massachusetts, at <http://www.cambridgepublichealth.org/publica/phepp.pdf>; District of Columbia Community Emergency Management Plan, Cluster 1, at: http://dcema.dc.gov/dcema/frames.asp?doc=/dcema/lib/dcema/pdf/cluster_1.pdf.

¹⁹ See State of California Bioterrorism Surveillance and Epidemiologic Response Plan, at: http://www.dhs.ca.gov/ps/dcdc/bt/pdf/CA_BT_Surv_Epi_Plan-2002b.pdf (January 2002).

²⁰ See NJ DHSS Terrorism and Public Health Emergency Preparedness and Response Plan, at: <http://www.state.nj.us/health/er/erplan.pdf>.

²¹ See State of California Bioterrorism Surveillance and Epidemiologic Response Plan, at: http://www.dhs.ca.gov/ps/dcdc/bt/pdf/CA_BT_Surv_Epi_Plan-2002b.pdf (January 2002).

²² See Baltimore County Emergency Operations Plan, Annex G, Health, Medical and Mortuary, at: http://resources.co.ba.md.us/Documents/Imported_Documents/a/annexg.pdf

²³ See, e.g., Fla. Stat. ch. 381.00315 (2003).

²⁴ See, e.g., LA. REV. STAT. ANN. § 29:769 (West 2003).

²⁵ See, e.g., MICH. COMP. LAWS § 333.2458 (1978).

²⁶ See, e.g., DEL. CODE ANN. tit. 20, § 3145 (2002).

²⁷ See, e.g., MINN. CONST. art. I, § 13.

²⁸ See, e.g., DEL. CODE ANN. tit. 20, § 3133 (2002).

²⁹ See, e.g., LA. REV. STAT. ANN. § 29:766 (West 2003).

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- ³⁰ See, Ontario County Comprehensive Emergency Management Plan, Ontario County, New York, at: http://www.co.ontario.ny.us/emergency_mgt/occemp.pdf (December 2003).
- ³¹ See, e.g., MICH. COMP. LAWS § 333.2453 (1978).
- ³² See Lawrence O. Gostin & James G. Hodge, Jr., The Model State Emergency Health Powers Act - a brief commentary. Turning Point Statute Modernization Collaborative 1-42 (2002) (also available at *Center's* website at www.publichealthlaw.net/Resources/Modellaws.htm).
- ³³ See, e.g., MICH. COMP. LAWS § 30.410 (1976).
- ³⁴ See Cambridge Public Health Department Emergency Operations Plan, Cambridge Massachusetts, at: <http://www.cambridgepublichealth.org/publica/phepp.pdf>.
- ³⁵ See, e.g., 20 ILL. COMP. STAT. § 3305/7.
- ³⁶ See, e.g., DEL. CODE ANN. tit. 16, § 1232.
- ³⁷ 45 C.F.R. §§ 160, 164 (2000).
- ³⁸ See, e.g., DEL. CODE ANN. tit. 20, § 3139 (2002).
- ³⁹ See, e.g., ARIZ. REV. STAT. § 36-788 (2002).
- ⁴⁰ See, e.g., DEL. CODE ANN. tit. 20, § 3136(5)(d) (2002).
- ⁴¹ See District of Columbia District Response Plan, Health and Medical Services, section V, at: <http://dcema.dc.gov/dcema/cwp/view.a.1226.q.537099.asp>.
- ⁴² See, e.g., S.C. CODE ANN. § 44-1-100 (Law. Co-op. 2003).
- ⁴³ See Lake County Comprehensive Emergency Management Plan, Lake County, Florida, at: http://www.co.lake.fl.us/pdfs/CEMP/CEMP_BasicPlan.pdf.
- ⁴⁴ See, e.g., LA. REV. STAT. ANN. § 29:769(C)(1) (2003).
- ⁴⁵ See, e.g., 430 ILL. COMP. STAT. § 50/4 (1984).
- ⁴⁶ See, e.g., LA. REV. STAT. ANN. § 29:764 (West 2003).
- ⁴⁷ See NJ DHSS Terrorism and Public Health Emergency Preparedness and Response Plan, Chapter 9, at: <http://www.state.nj.us/health/er/erplan.pdf>.
- ⁴⁸ See Pierce County Comprehensive Emergency Management Plan, Pierce County, Washington, at: <http://www.co.pierce.wa.us/text/Abtus/ourorg/dem/EMDiv/CEMP.htm - ESF8>.
- ⁴⁹ See, e.g., LA. REV. STAT. ANN. § 29:770 (West 2003).