



Department of
Community Health



Mutual Aid: Unity of Purpose, Information and Resources

*An Issue Brief for State and Local
Public Health Policy Makers*

December 2004



Attributions

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December 13, 2004

Executive Summary

Mutual aid agreements are an integral part of preparedness planning for all hazards at every level of government. They are pre-incident plans for assistance between jurisdictions when local resources are overwhelmed during a disaster or emergency. They address legal, technical and procedural issues related to the sharing of personnel, equipment and other resources for emergency response. Reimbursement, insurance, workers' compensation, liability, and licensing are some of the key issues addressed in mutual aid agreements.

The scope and application of mutual aid agreements vary. Some are designed for participation by governmental entities and apply to public sector resources. Others are designed for private sector partners and resources. Public health preparedness requires planning for mutual aid. State and local public health resources could be required for emergency response at the local, state and federal levels. Public health officials need to be familiar with mutual aid compacts or agreements that apply to their jurisdictions. In many cases, there are public health roles and responsibilities embedded in these agreements.

This *Issue Brief* describes the concept of mutual aid within the context of emergency management and public health preparedness. It identifies resources for developing mutual aid agreements. Interstate, intrastate, and inter-local agreements are explained. And, the legal authority for local government to enter into mutual aid agreements for public health resources is addressed.

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Issue Brief on Mutual Aid and Public Health Agencies

December 2004

Introduction



Security (DHS) placed increased emphasis on state and local mutual aid as a key to the nations' emergency response capabilities for all hazards, man-made or natural.

This *Issue Brief* is intended to inform state and local public health policy makers about various types of mutual aid compacts or agreements and their importance as emergency management tools. In the wake of 9/11, mutual aid between governments, both interstate and intrastate, became a higher priority for emergency and disaster planning. The U.S. Department of Homeland

“The attacks of September 11, 2001 overwhelmed the response capacity of most of the local jurisdictions where the hijacked airliners crashed. While many jurisdictions have established mutual aid compacts, a serious obstacle to multi-jurisdictional response has been the lack of indemnification for mutual-aid responders in areas such as the National Capital Region.”¹

The 9/11 Commission Report

What is a Mutual Aid Agreement?

Mutual aid agreements are plans for the sharing of resources between communities during an emergency or disaster. They address legal, technical, and procedural issues such as: when and how to request assistance, reimbursement, license, certification and permit portability, workers' compensation, insurance, and liability.

Mutual aid agreements are used in both the private and public sectors. This *Issue Brief* focuses primarily on mutual aid agreements that are used in the public sector. There are agreements between states (interstate) and agreements between local units of government within a state (intrastate). Furthermore, there are supplemental agreements or annexes to mutual aid agreements that detail how specific disciplines or agencies plan to assist one another across jurisdictions. Oftentimes these are established through a Memorandum of Understanding (MOU).

Public health officials need to be familiar with mutual aid compacts or agreements that apply to their jurisdictions. In many cases there are public health roles and responsibilities embedded in these agreements. Furthermore, public health policy makers can buttress these agreements with supplemental plans between public health agencies and other partners in preparedness.



“The attacks on 9/11 demonstrated that even the most robust emergency response capabilities can be overwhelmed if an attack is large enough. Teamwork, collaboration, and cooperation at an incident site are critical to a successful response.”²

The 9/11 Commission Report

National Mutual Aid and Resource Management Initiative

The Federal Emergency Management Agency (FEMA) was charged with developing the *National Mutual Aid and Resource Management Initiative*.³ The purpose of the *Initiative* is to enhance the ability of any jurisdiction (federal, state and local) to respond to an incident through the use of mutual aid. The goal of the *Initiative* is to establish a comprehensive, integrated, national mutual aid and resource management system that will allow for an efficient and effective response to all hazards.



The *Initiative* is an important component of the National Incident Management System (NIMS).⁴ Following 9/11, the DHS approved NIMS as the Nation's first standardized management approach that unifies Federal, state, and local lines of government for incident response. NIMS establishes standardized incident management processes, protocols, and procedures that all responders – Federal, state, tribal, and local – will use to coordinate and conduct response actions.⁵

Legal Authority for Emergency Preparedness

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (The Stafford Act) vests joint responsibility for emergency preparedness in the Federal Government and the States and their political subdivisions.⁶ The Stafford Act requires states and local governments to comply with a broad range of provisions in order to assure a comprehensive, nationwide emergency preparedness system for all hazards.

In compliance with The Stafford Act, Michigan enacted Public Act 390 of 1976, titled the Emergency Management Act (PA 390).⁷ This statute authorizes the governor to declare a state of disaster, a state of emergency, or a heightened state of alert. Each declaration carries specific authority for the

governor to issue executive orders, proclamations, and directives having the force and effect of law.



PA 390 designates the Director of the State Police to implement such orders and to coordinate all federal, state, county, and municipal disaster prevention, mitigation, relief, and recovery operations within the state. In addition, PA 390 established the Michigan State Police Emergency Management Division (EMD/MSP) for the purpose of coordinating within the state the emergency management activities of county, municipal, state, and federal governments.

The EMD/MSP is responsible for preparing and maintaining the Michigan Emergency Management Plan.⁸ This is a comprehensive plan that encompasses mitigation, preparedness, response, and recovery for the state. In addition, the EMD/MSP is authorized to propose and administer statewide mutual aid compacts and agreements.⁹

Emergency Management Assistance Compact



The Emergency Management Assistance Compact (EMAC) is the **interstate** mechanism to exchange resources and assistance in the event of a presidential or gubernatorial declared emergency. The National Emergency Management Association (NEMA) administers EMAC in collaboration with FEMA.

Established in 1993, EMAC includes 48 states, the District of Columbia, and two U.S. Territories (California and Hawaii are the only states that have not yet joined). Michigan joined EMAC in 2001.¹⁰ The EMD/MSP is responsible for managing Michigan's role in EMAC.

In September 2004, EMAC was invoked by the State of Florida in response to a series of devastating hurricanes. An emergency response team from the State of Michigan was deployed to Florida to assist with disaster recovery. Led by the EMD/MSP, the team included Jennifer Beggs who is an epidemiologist from the Michigan Department of Community Health.

National Model Intrastate Mutual Aid Compact

In March 2004, FEMA unveiled a model mutual aid compact for states to use for **intrastate** emergency preparedness.¹¹ It is a tool for increasing connectivity among regions, counties, and other local jurisdictions within a state. This model is a product of the National Mutual Aid and Resource Management Initiative. A working group that included representation from a broad array of organizations developed the model. The working group included representatives of emergency management, public safety, public health, and public works organizations.

Many local jurisdictions already have mutual aid agreements in place, but they vary widely. Many are not formal written agreements; they do not address all key issues such as liability and compensation; nor do they encompass multiple disciplines. For example, many states have Mutual Police Assistance Agreements between local jurisdictions.¹²

The model intrastate mutual aid agreement is not intended to replace or affect existing agreements. Rather, it is intended to supplement existing agreements by establishing a comprehensive, integrated system of mutual aid within the state that assures an efficient and effective response to all hazards. Furthermore, the model allows for supplemental agreements between participants (i.e., annexes, MOUs). Finally, the model intrastate mutual aid compact is designed to work with EMAC for seamless escalation of disaster response and execution of mutual aid.

Participation in the intrastate compact is voluntary. However, in the event of a presidential or gubernatorial declaration of disaster or emergency, FEMA policy specifies eligibility criteria for federal reimbursement of costs incurred through mutual aid.¹³ FEMA will reimburse mutual aid costs provided that certain conditions are met. One of the conditions is: **The mutual aid agreement must be in written form and signed by authorized officials of the agreeing parties prior to the disaster. There are no provisions for reimbursement of mutual aid expenditures when there is no prior, written agreement.**

Key Point: *If the parties to the agreement intend to seek federal or state reimbursement for mutual aid, then the parties must agree to reimburse one another for such expenditures, regardless of whether or not federal or state funds are available, and this must be stated in writing prior to the disaster or emergency.*

Michigan Emergency Management Assistance Compact

The Michigan Emergency Management Assistance Compact (MEMAC) is the intrastate mutual assistance compact for Michigan. It is an initiative of the EMD/MSP that is designed to help Michigan's 1,776 local political subdivisions to more effectively and efficiently exchange services and resources, especially in response to a major disaster where assistance needs to be provided from one area of the state to another.¹⁴ It is a planning tool that addresses many administrative and logistical issues before intrastate assistance is requested.

PA 390 authorizes the governor, with the approval of the state administrative board, to enter into a reciprocal aid agreement or compact with another state, the federal government, or a neighboring state or province of a foreign country.¹⁵ Likewise, PA 390 authorizes counties and municipalities to enter into mutual aid or reciprocal aid agreements or compacts with other counties and municipalities; and with public agencies, federally recognized tribal nations, or private sector agencies, or all of these entities, for the purpose of providing assistance during a disaster or emergency.¹⁶

PA 390 limits a compact to the exchange of personnel, equipment, and other resources in times of emergency, disaster, or other serious threats to public health and safety. Furthermore, the arrangements must be consistent with the Michigan Emergency Management Plan.

MEMAC establishes procedures to request assistance for the State of Michigan and for any participating local government that becomes affected by or is under imminent threat of a disaster, emergency, or other serious threat to public health and safety. It sets forth the terms and conditions governing reimbursement for assistance rendered by participating local governments; and it resolves issues concerning insurance and liability coverage of emergency workers when responding from one locality to another. Finally, MEMAC is designed to take full advantage of opportunities for state and federal reimbursement of eligible costs.

The goal is to have all counties and municipalities sign-on as participating members of MEMAC. The first draft of MEMAC was unveiled in August 2003. Subsequently, the EMD/MSP and organizations representing county and municipal governments have worked to refine the compact. Provisions for reimbursement are of particular concern. This issue must be addressed very carefully in order to protect local governments from unreasonable financial obligations, while preserving eligibility for potential state and federal reimbursement. It is anticipated that, by the end of 2004, MEMAC will be finalized and a signing ceremony will be held with the governor.

MEMAC and supporting documents are available on the EMD/MSP website www.mspemd.org. Questions about MEMAC should be directed to Sgt. Kevin Mark, of the Homeland Security Section, at (517) 336-6429 or via email at <mailto:markk@michigan.gov>.

Supplemental Agreements • Annexes • Memoranda of Understanding

MEMAC is a public sector mutual aid compact. It is designed for governmental entities and public resources. Counties, municipalities, townships, political subdivisions¹⁷, and interlocal public agencies¹⁸ may become parties to this compact.

MEMAC is supplemental to and does not replace or supersede existing local mutual aid agreements between adjacent or nearby localities. By design, participating governments may invoke MEMAC only when they require assistance that is not available through existing local agreements and resources.

Key Point: *First response is local. MEMAC may be invoked when local resources are overwhelmed. EMAC is the last resort for emergency assistance from other states.*

Specialized disciplines (e.g., fire services, emergency medical services, HazMat response teams) might consider it necessary to develop supplementary agreements or annexes to MEMAC with more detailed plans or guidance for their response operations.



For example, the Federal Strategic National Stockpile (SNS) Program relies on interagency agreements as part of its regional deployment process. As Michigan plans for SNS, regional interagency agreements are being developed.

As part of this effort, the Mid-Michigan District Health Department is developing a MOU for the establishment of an emergency clinic for mass vaccination/dispensing or other public health emergency. This MOU is designed for participation by the district health department, the counties served by the district health department along with their emergency management services departments, the American Red Cross, and participating school districts. The MOU stipulates the roles and responsibilities of each participant, including liability. This MOU does not address the utilization of resources from jurisdictions beyond the district. Rather, it is an agreement that details plans for a public health emergency response within the district health department's jurisdiction.



Reimbursement provisions of local agreements should be carefully considered in order to protect eligibility for state or federal reimbursement in the event of a gubernatorial or presidential declaration of disaster or emergency.

- FEMA will not reimburse a local government for any costs associated with securing assistance from another jurisdiction unless that assistance was obtained through a pre-existing, written mutual aid agreement that requires reimbursement.
- Local governments that enter into mutual aid agreements stipulating the provision of assistance without reimbursement from the requesting party will not be eligible for state or federal reimbursement of mutual aid costs.
- Furthermore, reimbursement for mutual aid cannot be made contingent on a gubernatorial or presidential declaration; local governments must be prepared to expend local resources and accept their obligations for

reimbursement to assisting parties regardless of whether such declarations are forthcoming.

Legal Authority for Local Government to Enter into Mutual Aid Agreements for Public Health Resources

The Public Health Code establishes the powers and responsibilities of local health departments. It requires that local health departments “continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including prevention and control of environmental health hazards; prevention and control of diseases; prevention and control of health problems of particularly vulnerable population groups”¹⁹ In fact, required services that local health departments must provide shall be directed at these specific objectives.²⁰

The Public Health Code grants a local health department the “powers necessary or appropriate to perform the duties and exercise the powers given by law to the local health officer and which are not otherwise prohibited by law.”²¹ Additionally, the Public Health Code specifically allows a local health department to “[e]nter into an agreement, contract, or arrangement with a governmental entity or other person necessary as appropriate to assist the local health department in carrying out its duties and functions unless otherwise prohibited by law.”²² Nothing in the Public Health Code prohibits a local health department from contracting with another local health department to ensure that each meets its responsibilities to safeguard the public health. Thus, it appears that under the Public Health Code local health departments could enter into agreements for mutual aid.

It is doubtful, however, that a local health department is authorized to commit significant resources to another local health department without approval of the governing body of the local governmental unit. Most likely, the governing body would enter into any contract for mutual aid. A local governmental body could contract for mutual aid under its authority to enter into intergovernmental contracts. For charter counties,²³ charters must include the power and authority to enter into any intergovernmental contract that is not specifically prohibited by law.²⁴ And, whether or not chartered, local units of government are specifically authorized to enter into intergovernmental contracts by 1951 PA 35,²⁵ which covers intergovernmental contracts between “municipal corporations.” In this regard, the Attorney General has recognized that this intergovernmental contracts statute authorizes a municipal corporation to enter into intergovernmental contracts regardless of whether this power is covered in the unit’s charter.²⁶

Under the intergovernmental contracts statute, a “municipal corporation” is defined to include a county, township, city, village, school district, public authority, as well as other local governmental units that have the power to enter into contractual undertakings.²⁷ Local government is authorized to contract with other local governmental units to furnish any local governmental service to property outside its jurisdiction for adequate consideration.²⁸ The consideration for such contracts might be the agreement to come to one another’s aid.

The power to enter into intergovernmental contracts should provide sufficient legal authority for local governmental bodies to enter into mutual aid agreements for the exchange of public health resources. As the Attorney General recognizes, “mutual aid agreements are contractual in nature.”²⁹ Indeed, the Attorney General concluded that the intergovernmental contracts statute provided sufficient legal authority to allow several cities to enter into a reciprocal fire aid agreement.³⁰

In addition to the authority under the intergovernmental contracts statute, the Emergency Management Act (PA 390)³¹ provides explicit authority for governing bodies of counties and municipalities to enter into mutual aid agreements with one another. In this regard, the Emergency Management Act states:

For the purpose of providing assistance during a disaster or emergency, municipalities and counties may enter into mutual aid or reciprocal aid agreements or compacts with other counties, municipalities, public agencies, federally recognized tribal nations, or private sector agencies, or all of these entities.³²

Under this act, mutual aid compacts between local governments are “limited to exchange of personnel, equipment, and other resources in times of emergency, disaster, or other serious threats to public health and safety.”³³ This means a mutual aid compact under PA 390 could cover the exchange of public health resources.

While mutual aid compacts should be developed under the Emergency Management Act, such compacts could be insufficient to address exchanges of public health resources in all situations that local government might want to cover. A compact under the Emergency Management Act is intended for providing assistance during a declared state of emergency, and then the emergency management coordinator carries out the agreement or compact.³⁴ However, local governing bodies might want to provide for mutual aid in situations that do not warrant a declaration of emergency. For instance, local governments might wish to provide for exchange of resources, coordinated through their local health officers, when one health department’s resources are

temporarily overwhelmed by an event or investigation. The intergovernmental contracts statute could be used as authority for a mutual aid agreement that includes the sharing of resources when there is no declaration of an emergency.

Local Public Health Mutual Aid Systems

Federal Bioterrorism Grants Require Planning for Mutual Aid

Federal bioterrorism preparedness funding to states is contingent upon the achievement of *critical benchmarks* that are stipulated in two Federal grants. Under the Centers for Disease Control and Prevention (CDC) Cooperative Agreement on Public Health Preparedness and Response for Bioterrorism, recipient states must:

- Develop or enhance scalable *plans* that support local, statewide, and regional response to incidents of bioterrorism, catastrophic infectious disease, such as pandemic influenza, other infectious disease outbreaks, and other public health threats and emergencies.
- Plans must include detailed preparations to rapidly administer vaccines and other pharmaceuticals, and to perform healthcare facility based triage and provide short-term acute psychosocial interventions as well as longer-term services to large populations.
- This should include the development of emergency mutual aid agreements and/or compacts, and inclusion of hospitals.³⁵

The National Bioterrorism Hospital Preparedness Program, which is administered by the U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA), also includes *critical benchmarks* that require mutual aid agreements. For example, mutual aid agreements are needed in order to assure regional hospital surge capacity and emergency medical service coverage to all jurisdictions.

OPHP & MALPH Collaborative Project on Mutual Aid

As part of the CDC Cooperative Agreement, the Michigan Department of Community Health, Office of Public Health Preparedness (OPHP), is working with the Michigan Association for Local Public Health (MALPH) to facilitate the development of mutual aid agreements involving local health departments. The goal of this project is to develop a template that local health departments and their governing entities could use to plan for the sharing of public health resources between jurisdictions.

The first objective of this project was to assess existing mutual aid agreements. A number of jurisdictions have developed mutual aid agreements between local health departments. Many of these agreements are based on the National Model Intrastate Mutual Aid Agreement and tailored to address public health agencies.

The *Illinois Public Health Mutual Aid System* is a model that is currently receiving considerable attention. It is an intergovernmental mutual aid agreement between units of local government having a local health department that is certified by the Illinois Department of Public Health. This model is available at the following link: [Illinois Public Health Mutual Aid System](#).

One potential weakness of this model is its section on reimbursement. This section stipulates that members will provide resources without compensation from the stricken member. Although this section allows for compensation from a third party, FEMA policy prohibits reimbursement under these circumstances.

In Michigan, the 5th District Medical Response Coalition (which encompasses Emergency Preparedness Region 5) formed a Mutual Aid Task Force to develop a mutual aid agreement between local health jurisdictions. It reflects much of the Illinois Model, including the provision of aid without compensation from the requesting party. This agreement is available on the coalition website: www.5dmrc.org. To date, the following local health departments have entered into this agreement:

- VanBuren/Cass District Health Department
- Berrien County Health Department
- Calhoun County Health Department
- Branch-Hillsdale-St. Joseph Community Health Agency
- Allegan County Health Department
- District Health Department #4
- Northwest Michigan Community Health Agency.

Genesee County Health Department is in the process of developing a *Local Public Health Mutual Aid and Assistance System*, which is also based on the Illinois Model. It differs from the 5th District Model in several ways, including provisions for indemnification and insurance.

The second objective of the OPHP/MALPH collaborative project was to provide information to local health departments about the concept of mutual aid agreements within the context of emergency management. This *Issue Brief* is intended to fulfill that objective.

The third objective of this project is to develop a template for local health departments to use as a guide in developing mutual aid agreements for public health resources. This template will be developed during 2005.

Key Point: *The objectives of the OPHP/MALPH collaborative project are to: Assess existing mutual aid agreements; provide information about the concept of mutual aid agreements within the context of emergency management; and, develop a template for mutual aid agreements involving public health resources.*

Conclusion

Mutual aid agreements are an integral part of preparedness planning for all hazards at every level of government. They are pre-incident plans to gain assistance for other jurisdictions. They correspond to the National Incident Management Plan, State Emergency Management Plan, and Local Emergency Operations Plans. Public health agencies have roles and responsibilities for mutual aid at all levels – federal, state and local. For additional information, please contact Karen Krzanowski, of the MDCH Office of Public Health Preparedness, (517) 335-8150 or via email at krzanowskik@michigan.gov.

References

- ¹ The 9/11 Commission Report, Final Report of The National Commission on Terrorist Attacks Upon The United States, p. 397.
- ² The 9/11 Commission Report, Final Report of The National Commission on Terrorist Attacks Upon the United States, p.396.
- ³ FEMA: National Mutual Aid and Resource Management Initiative, www.fema.gov/preparedness/mutual_aid.stm .
- ⁴ National Incident Management System (NIMS), U.S. Department of Homeland Security, www.dhs.gov/dhspublic .
- ⁵ U.S. Department of Homeland Security, Fact Sheet: National Incident Management system (NIMS).
- ⁶ The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. 93-288).
- ⁷ The Emergency Management Act, Public Act 390 of 1976, MCL 30.401 et seq.
- ⁸ Michigan Emergency Management Plan, EMD PUB-101, Feb. 2004, Emergency Management Division, Michigan Department of State Police.
- ⁹ Public Act 390 of 1976, the Emergency Management Act, Sec. 7a (MCL 30.407a).
- ¹⁰ Public Acts 247 and 248 of 2001 established Michigan’s participation in EMAC (MCL 3.991 et seq.).
- ¹¹ *National Model Intrastate Mutual Aid Legislation* produced by The National Emergency Management Association, with support from the Federal Emergency Management Agency and the U.S. Department of Homeland Security, available at <http://www.emacweb.org>.
- ¹² Michigan law authorizes Mutual Police Assistance Agreements, MCL 123.811 et. seq.
- ¹³ FEMA, Response and Recovery, Public Assistance, Policy 9523.6 Mutual Aid Agreements for Public Assistance.
- ¹⁴ *The Michigan Emergency Management Assistance Compact*, Michigan State Police, Emergency Management Division, www.mspemd.org .
- ¹⁵ PA 390 of 1975, Sec. 4 [MCL 30.404 (3)].
- ¹⁶ PA 390 of 1976, Sec. 10 [MCL 30.410 (2)].
- ¹⁷ Pursuant to the Emergency Management Act, Sec. 2 (p) [MCL 30.402 (n)] MEMAC defines “political subdivisions” as: A county, municipality, school district or other governmental unit, agency, body, board or commission which is not a state department, board, commission or agency of state government.

¹⁸ MEMAC defines “interlocal public agency” as a governmental entity created by an agreement between other governmental entities pursuant to the Urban Cooperation Act of 1967 (MCL 124.501 et seq.).

¹⁹ MCL 333.2433(1).

²⁰ MCL 333.2473(1).

²¹ MCL 333.2433(f).

²² MCL 333.2435(c).

²³ Wayne County is the only charter county in Michigan.

²⁴ MCL 45.514(1)(j).

²⁵ MCL 124.1 *et seq.*

²⁶ Op Atty Gen, No 2032 (April 14, 1955).

²⁷ A “municipal corporation” includes “a county, charter county, county road commission, township, charter township, city, village, school district, community college district, metropolitan district, court district, public authority, or drainage district . . . or any other local governmental authority or local agency with power to enter into contractual undertakings.” MCL 124.1(a).

²⁸ MCL 124.2.

²⁹ Op Atty Gen 6740 (November 24, 1992). While a local unit of government can contract for mutual aid, it cannot contract away its governmental powers.

³⁰ Op Atty Gen, No 2032 (April 14, 1955).

³¹ 1976 PA 390, MCL 30.401 *et seq.*

³² MCL 30.410(2).

³³ MCL 30.410(2).

³⁴ MCL 30.410(3).

³⁵ CDC Continuation Guidance, Budget Year Five, Attachment A, Focus Area A: Preparedness Planning and Readiness Assessment, Critical Benchmark #2.