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Public Health Emergency Legal Preparedness Checklist
Interjurisdictional Legal Coordination for
Public Health Emergency Preparedness

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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@jhsp.edu) (interjurisdictional checklist); James G. Hodge, Jr., JD, LL.M., *Center* Executive Director (jhodge@jhsp.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:

Interjurisdictional Legal Coordination For Public Health Emergency Preparedness

| Subject Category | Checklist Question | √ |
|------------------|---|---|
| I. Preparedness | | |
| A. Property | | |
| Federal | 1. Do federal, state and local regulatory requirements differ with respect to property to be exchanged during an emergency? | |
| State | | |
| | 2. Has the state undertaken any obligation to share supplies with other jurisdictions in the event of an emergency (e.g., EMAC)? | |
| | 3. Has the state confirmed that material it may send or receive during an emergency is acceptable for use in the jurisdiction under governing regulations? | |
| | 4. Are hospitals and other health-care facilities required to maintain emergency plans under licensing/credentialing/ reimbursement standards and, if so, do they have an inter-jurisdictional component? | |
| Local | | |
| | 5. Are there licensing or regulatory regimes peculiar to the local jurisdiction? | |
| B. People | | |
| Federal | | |
| | 6. Do federal employees face licensing or credentialing barriers to working in states? | |
| | 7. Is federal contingency planning required to address and coordinate large migrations of refugees and/or sick persons across state boundaries? | |
| State | | |
| | 8. Are there licensing or regulatory regimes peculiar to the state jurisdiction? | |
| | 9. Are state planners required to anticipate large migrations of refugees and/or sick persons across state boundaries? | |
| Local | | |
| | 10. Are there licensing or regulatory regimes peculiar to the local jurisdiction? | |

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| C. Data sharing | | |
| Federal | | |
| | 11. What disease surveillance information sharing mechanisms are in place? | |
| | 12. Are there requirements to share preparedness/ prevention/ readiness assessment results with state and local partners? | |
| State | | |
| | 13. What disease surveillance information sharing mechanisms are in place? | |
| | 14. Are there requirements to share preparedness/ prevention/ readiness assessment results with partners? | |
| Local | | |
| | 15. What disease surveillance information sharing mechanisms are in place? | |
| | 16. Are there requirements to share preparedness/ prevention/ readiness assessment results with partners? | |
| D. Administration | | |
| Federal | | |
| State | | |
| | 17. What mutual aid agreements exist with bordering states or other jurisdictions (e.g., EMAC)? | |
| | 18. Do such agreements apply to pre-emergency preparations? | |
| | 19. Has the legally designated state official formulated mutual aid plans and procedures necessary to implement the state's obligations under mutual aid agreements (e.g., EMAC), if any? | |
| | 20. Are EMACs standardized across states? | |
| | 21. Has the state developed EMAC reimbursement and dispute resolution mechanisms? | |
| Local | | |
| | 22. To what mutual assistance agreements is the local government a party and what obligations do they impose? | |
| | 23. Under what circumstances can a local government ask for or require assistance from its state government or neighboring local or state governments? | |
| II. Response | | |
| A. Property | | |
| Federal | | |
| | 24. Can the federal government re-allocate committed supplies between jurisdictions once en-route during an emergency? | |
| | 25. Can the federal government seize state, local or private facilities? | |
| State | | |
| | 26. Once a state takes possession of federal emergency assistance materials, can it be required to relinquish them to another state? | |
| | 27. Can the state seize federal, county/municipal or private property during an emergency? | |
| | 28. Does NIMS affect states' authority to dispose of property during emergencies? | |
| Local | | |
| | 29. Under what circumstances must local authorities relinquish control of materials or resources to the state or its neighbors? | |
| | 30. Does NIMS affect the designated local lead emergency management official's ability to commit local material resources? | |
| | 31. Can local officials seize federal, state or private property during an emergency? | |
| | 32. Can local officials close federal, state or private buildings during emergencies (e.g., courthouses, state universities, post offices)? | |

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| B. People | | |
| Federal | | |
| | 33. May federal personnel practice their licensed or regulated professions in responding to an emergency in the host jurisdiction? | |
| | 34. May federal personnel in licensed or regulated professions practice in related specialties in responding to an emergency in the host jurisdiction? | |
| | 35. Can the federal government use or authorize the use of unlicensed personnel to perform professionally regulated functions in an emergency in the host jurisdiction? | |
| | 36. May the federal government impose quarantine orders on residents inside a state's jurisdictional boundaries? | |
| State | | |
| | 37. Who has authority over federal, neighboring state and local employees responding to emergencies within the state? | |
| | 38. Who has authority to impose personal control measures (e.g., quarantine and isolation) during an emergency? | |
| | 39. May out-of-state state personnel practice their licensed or regulated professions in responding to an emergency in the host jurisdiction? | |
| | 40. May state personnel practice their licensed or regulated professions in responding to an emergency in a neighboring jurisdiction? | |
| | 41. May the State use out-of-state unlicensed personnel? | |
| | 42. May out-of-state members of licensed or regulated professions practice in related specialties in responding to emergencies in the host jurisdiction? | |
| Local | | |
| | 43. Who has authority over local government personnel if they participate in emergency response in a neighboring jurisdiction? | |
| | 44. Do local authorities have authority over the actions of non-local volunteers operating within the locality? | |
| | 45. When can volunteer emergency personnel be asked to perform duties outside the locality? | |
| | 46. How should the locality deal with using unlicensed volunteer personnel from outside the jurisdiction? | |
| | 47. Can personnel committed under emergency plans be sent out of the locality? | |
| C. Administration | | |
| Federal | | |
| | 48. Can a state be compelled to accept federal emergency assistance? | |
| | 49. Can state borders be closed by the federal government and under what authority? | |
| State | | |
| | 50. What notification procedures exist when ID outbreaks or public health emergencies are suspected or confirmed? | |
| | 51. What kinds of health information can be shared with state and/or federal counterparts? | |
| | 52. How does NIMS affect state officials' authority to implement disease control measures? | |
| | 53. Can a state close its borders to interstate traffic? | |
| | 54. Can a state be compelled to accept federal emergency assistance? | |
| | 55. Does NIMS affect state officials' liability? | |
| Local | | |
| | 56. Do local and state agencies share overlapping authorities? | |
| | 57. Can local authorities close their jurisdictions to neighbors? | |

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| III. Recovery | | |
| A. Property | | |
| Federal | | |
| | 58. What liability does the federal government bear for the malfunction or misuse of federal materials sold or given to the host jurisdiction? | |
| | 59. What liability does the federal government bear for damage to non-federally owned materials transported by the federal government? | |
| State | | |
| | 60. What liability does the state government bear for the malfunction or misuse of state materials donated to the host jurisdiction? | |
| | 61. What liability does the state bear for damage to non-state owned materials transported by the state government at the request of another jurisdiction? | |
| | 62. How does NIMS affect state officials' liability? | |
| Local | | |
| | 63. What liability does the local government bear for damage to non-locally owned materials transported by the local government at the request of another jurisdiction? | |
| | 64. What liability does the local government bear for the malfunction or misuse of locally owned materials donated to the host jurisdiction? | |
| B. People | | |
| Federal | | |
| | 65. Are federal employees liable to local governments, state governments, the federal government and private parties for actions taken in response to an emergency? | |
| | 66. Are federal volunteers working with local governments, state governments, the federal government itself and private parties liable for actions taken in response to an emergency? | |
| State | | |
| | 67. Under what circumstances are government employees liable to other state governments, federal government and private parties for actions completed in-state in response to an in-state or out-of-state emergency? | |
| | 68. Are state volunteers liable to state government, federal government and private parties for actions completed in-state in response to an in-state or out-of-state emergency? | |
| | 69. Are providers liable to state government, federal government and private parties for actions completed in-state in response to an in-state or out-of-state emergency? | |
| | 70. What liability does state government bear to volunteers or out-of-state personnel for losses sustained while assisting the state in responding to an emergency? | |
| Local | | |
| | 71. Under what circumstances is a local government employee liable to local government, state government, federal government and private parties for actions completed in-locality or out-of-locality in response to an in-locality or out-of-locality emergency? | |
| | 72. Under what circumstances is a local government volunteer liable to local government, state government, federal government and private parties for actions completed in-locality or out-of-locality in response to an in-locality or out-of-locality emergency? | |
| | 73. Under what circumstances is a provider liable to local government, state government, federal government and private parties for actions completed in-locality or out-of-locality in response to an in-locality or out-of-locality emergency? | |
| | 74. What liability does the local government bear with respect to volunteers, providers, state, federal or out-of-locality personnel for losses sustained while assisting the locality in responding to an emergency? | |
| C. Administration | | |
| Federal | | |

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| | 75. Is the federal government liable to local governments, state governments and private parties for federal action taken in response to an emergency? | |
| State | | |
| | 76. Has the state resolved issues regarding the interplay of state workers compensation law and federal law, if any, in reimbursing emergency responders? | |
| | 77. Has the state addressed choice of law and venue/jurisdiction issues governing interstate and inter-county disputes arising out of emergency response? | |
| | 78. What provisions exist for the reimbursement of expenses related to evacuees entering or leaving the state? | |
| Local | | |
| | 79. In the event that resources (materials or personnel) are shared with jurisdictional neighbors, have compensatory mechanisms been agreed in advance? | |

Checklist: Interjurisdictional Legal Coordination for Public Health Emergency Preparedness

Overview: Effective interjurisdictional legal coordination is an important objective of CDC’s public health emergency preparedness grant program, appearing in Focus Area A (preparedness, planning, and readiness assessment) and Area B (surveillance and epidemiologic capacity) of the grant guidance.¹ Interjurisdictional legal coordination also has been the focus of a workshop CDC and the *Center* sponsored in December 2002 (see briefing memoranda posted at www.publichealthlaw.net/Resources/BTlaw.htm). Interjurisdictional legal issues related to public health emergency preparedness concern the coordination of activities and resources across local, state, and federal boundaries.

Interjurisdictional issues arise in two principle contexts: “horizontal” relationships between jurisdictions of similar legal standing (e.g., between adjacent counties) and “vertical” relationships between jurisdictions of different legal standing (e.g., between local and state, local and federal, and state and federal governments). Effective coordination is complicated by differences in the laws of U.S. jurisdictions and by the failure of existing laws to anticipate challenges and problems posed by modern public health emergency preparedness and response.

The *Center* developed the following checklist to give public health officials, their legal counsel, and policy makers a practical tool they may use in assessing their interjurisdictional legal coordination concerning public health emergencies. The checklist is a flexible tool users may modify and tailor to suit the unique characteristics of their own jurisdictions and agencies. The principal criterion for including a given issue or question in this checklist is whether it relates to a legal issue that is critical to effective operational coordination across jurisdictional lines and is one that involves, or may involve, coordination of the legal powers of multiple jurisdictions or possible conflict among such powers.

| Subject Matter | Question | Commentary |
|-------------------------|--|---|
| I. Prevention | | |
| | | |
| II. Preparedness | | |
| A. Property | | |
| Federal | | |
| | 1. Do federal, state and local regulatory requirements differ with respect to property to be exchanged during an emergency? | Federal law provides standards for many different kinds of property, especially (through FDA) medical devices and pharmaceuticals. However jurisdictions may differ in their unique requirements (e.g., safety equipment, etc.). Jurisdictions' use of pharmaceuticals from outside the U.S. should also be considered. |
| State | | |
| | 2. Has the state undertaken any obligation to share supplies with other jurisdictions in the event of an emergency (e.g., EMAC)? | Under Emergency Management Assistance Compacts ("EMACs") states voluntarily accept mutual obligations to render emergency assistance, including the lending of equipment/supplies. ⁱⁱ These obligations are typically conditioned on the sending state's ability to protect the health of its own citizens. |
| | 3. Has the state confirmed that material it may send or receive during an emergency is acceptable for use in the jurisdiction under governing regulations? | State law provides standards for many different kinds of property and jurisdictions may differ in their unique requirements (e.g., safety equipment, etc.). Jurisdictions' use of pharmaceuticals from outside the U.S. should also be considered. |
| | 4. Are hospitals and other health-care facilities required to maintain emergency plans under licensing/credentialing/reimbursement standards and, if so, do they have an inter-jurisdictional component? | Some states authorize the Secretary of Health to require health care facilities to develop emergency plans. ⁱⁱⁱ Especially in border communities these plans could have important interjurisdictional components. |
| Local | | |
| | 5. Are there licensing or regulatory regimes peculiar to the local jurisdiction? | This should be considered unlikely, with the possible exception of large metropolitan areas. |
| B. People | | |
| Federal | | |
| | 6. Do federal employees face licensing or credentialing barriers to working in states? | States generally enjoy exclusive authority to license professional services within their boundaries. Emergency planning should eliminate or deal with potential restrictions on the activities of federal professionals during emergencies. |
| | 7. Is federal contingency planning required to address and coordinate large migrations of refugees and/or sick persons across state boundaries? | Conceivably, especially near state boundaries, healthy people, suspected cases, and confirmed cases may need to be moved across state lines. States may require assistance in managing these movements and resolving disputes. |
| State | | |
| | 8. Are there licensing or regulatory regimes peculiar to the state jurisdiction? | States generally enjoy exclusive authority to license professional services within their boundaries. Emergency planning should eliminate or deal with any potential restrictions on the activities of out-of-state responders during emergencies. States should refer to their EMACs, as applicable. ^{iv} |

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| | 9. Are state planners required to anticipate large migrations of refugees and/or sick persons across state boundaries? | Healthy people, suspected cases, and confirmed cases may need to be moved across state lines. States, where applicable, should refer to their EMACs. ^v |
| Local | | |
| | 10. Are there licensing or regulatory regimes peculiar to the local jurisdiction? | This is unlikely, with the possible exception of significant metropolitan areas. |
| C. Data sharing | | |
| Federal | | |
| | 11. What disease surveillance information sharing mechanisms are in place? | Timely reporting of information derived from disease surveillance plays an important part in detecting incipient outbreaks. Disease reporting by states is largely voluntary and often complicated by perceived health information privacy concerns. ^{vi} |
| | 12. Are there requirements to share preparedness/ prevention/ readiness assessment results with state and local partners? | The federal government has engaged in extensive planning activities and exercises since September 11, 2001. Legal direction to disseminate assessment results to state and local partners could facilitate federal/state/local communication in the face of security and other concerns. |
| State | | |
| | 13. What disease surveillance information sharing mechanisms are in place? | Timely reporting of information derived from disease surveillance plays an important part in detecting incipient outbreaks. Disease reporting by states is largely voluntary and often complicated by perceived health information privacy concerns. Routine information sharing builds trust between equivalent public health agencies across state boundaries. Specific state legislative or regulatory direction to share identifiable information with partners can further encourage information sharing, though such legal specification is not required to permit data sharing under the HIPAA Privacy Rule. ^{vii} |
| | 14. Are there requirements to share preparedness/ prevention/ readiness assessment results with partners? | Legal direction to disseminate assessment results to state and local partners could facilitate federal/state/local communication in the face of security and other concerns. Federal grant programs have required assessment against preparedness benchmarks. ^{viii} Legal direction to disseminate assessment results to state and local partners as well could facilitate communication among security and other concerns. |
| Local | | |
| | 15. What disease surveillance information sharing mechanisms are in place? | Routine information sharing builds trust between equivalent public health agencies across boundaries. Specific state legislative or regulatory direction to share identifiable information with partners can further encourage information sharing. |
| | 16. Are there requirements to share preparedness/ prevention/ readiness assessment results with partners? | Legal direction to disseminate assessment results to state and local partners could facilitate federal/state/local communication in the face of security and other concerns. |
| D. Administration | | |
| Federal | | |
| State | | |

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| | 17. What mutual aid agreements exist with bordering states or other jurisdictions (e.g., EMAC)? | Under Emergency Management Assistance Compacts (“EMACs”) states voluntarily accept mutual obligations to render emergency assistance, including the lending of equipment/supplies. In addition, states may have entered into other forms of cooperative agreements. One example is the International Emergency Management Assistance Compact (“IEMAC”) adopted by several northeastern states and Canadian jurisdictions. ^{ix} |
| | 18. Do such agreements apply to pre-emergency preparations? | States should determine the degree of pre-emergency cooperation or collaboration required by mutual aid agreements to which they are parties. Many states are currently engaged in regional planning/preparation activities. ^x |
| | 19. Has the legally designated state official formulated mutual aid plans and procedures necessary to implement the state’s obligations under mutual aid agreements (e.g., EMAC), if any? | Under Emergency Management Assistance Compacts (“EMACs”) states voluntarily accept mutual obligations to render emergency assistance, including the lending of equipment/supplies. States should determine the degree of pre-emergency cooperation or collaboration required by mutual aid agreements to which they are parties. |
| | 20. Are EMACs standardized across states? | Under Emergency Management Assistance Compacts (“EMACs”) states voluntarily accept mutual obligations to render emergency assistance, including the lending of equipment/supplies. States should determine the degree of pre-emergency cooperation or collaboration required by mutual aid agreements to which they are parties. |
| | 21. Has the state developed EMAC reimbursement and dispute resolution mechanisms? | The EMAC does not contain explicit procedures for reimbursement and dispute resolution but calls for their development by state parties. ^{xi} |
| Local | | |
| | 22. To what mutual assistance agreements is the local government a party and what obligations do they impose? | A variant of the EMAC for county/local jurisdictions is available but not yet widely used. ^{xii} Local governments may have entered into a number of formal and informal agreements. These should be catalogued and readily available to planners. In some cases harmonization between sets of obligations may be necessary. |
| | 23. Under what circumstances can a local government ask for or require assistance from its state government or neighboring local or state governments? | Local governments may have entered into a number of formal and informal agreements. |
| III. Response | | |
| A. Property | | |
| Federal | | |
| | 24. Can the federal government re-allocate committed supplies between jurisdictions once en-route during an emergency? | This question raises two issues. First, in an environment of scarce resources, are there criteria for continuously re-evaluating needs as emergencies unfold? Second, is there a clearly understood dividing line between federal ownership, control over and liability for federal property being sent to states and the states’ assumption of ownership, control and liability (if any)? |
| | 25. Can the federal government seize state, local or private facilities? | Federal agencies can accept and utilize services or facilities of any governmental entity with consent. ^{xiii} FEMA’s Director has power to condemn or purchase privately owned materials or facilities. ^{xiv} |

| State | | |
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| | 26. Once a state takes possession of federal emergency assistance materials, can it be required to relinquish them to another state? | This question raises two issues. First, in an environment of scarce resources, are there criteria for continuously re-evaluating needs as emergencies unfold? Second, is there a clearly understood dividing line between federal ownership, control over and liability for federal property being sent to states and the states' assumption of ownership, control and liability? |
| | 27. Can the state seize federal, county/municipal or private property during an emergency? | States lack the capacity to seize federal government property. ^{xv} With respect to county or municipal property within their own states, officials must consult their state constitutions and legislation. States lack authority to seize property held by other states. |
| | 28. Does NIMS affect states' authority to dispose of property during emergencies? | The National Incident Management System ("NIMS") "represents a core set of doctrine, concepts, principles, terminology, and organizational processes to enable effective, efficient, and collaborative incident management at all levels." ^{xvi} NIMS is a management system and is not designed to alter states' fundamental legal rights and responsibilities. |
| Local | | |
| | 29. Under what circumstances must local authorities relinquish control of materials or resources to the state or its neighbors? | In an environment of scarce resources, are there criteria for continuously re-evaluating needs as emergencies unfold? In addition, localities may be bound by state emergency plans or assistance agreements. Localities may also control stockpiles in trust for the state. |
| | 30. Does NIMS affect the designated local lead emergency management official's ability to commit local material resources? | NIMS is a management system and is not designed to alter fundamental legal rights and responsibilities. |
| | 31. Can local officials seize federal, state or private property during an emergency? | Eminent domain can be used to further the public purpose of promoting public health, safety and morals. ^{xvii} Local officials, however, are unlikely to enjoy authority to seize state property. ^{xviii} Localities should refer to state legislation and local ordinances to determine the scope of their authority to seize private property during emergencies. Some state statutes provide explicitly that certain governmental entities do not enjoy eminent domain over property held by other governmental entities. ^{xix} |
| | 32. Can local officials close federal, state or private buildings during emergencies (e.g., courthouses, state universities, post offices)? | Localities enjoy authority to enforce local building codes and safety ordinances. Nevertheless, it has been held generally that localities can only enforce local ordinances against state property in the absence of a contrary intent by the state; and states cannot enforce codes and ordinances against the federal government. ^{xx} States and localities have no legal authority to close or condemn private buildings outside of their jurisdiction. |
| B. People | | |
| Federal | | |
| | 33. May federal personnel practice their licensed or regulated professions in responding to an emergency in the host jurisdiction? | States generally enjoy exclusive authority to license professional services within their boundaries. Emergency planning should eliminate or deal with potential restrictions on the activities of federal professionals during emergencies. This question should also be explored for non-federal employee professionals volunteering their services to federal agencies. |
| | 34. May federal personnel in licensed or regulated professions practice in related specialties in responding to an emergency in the host jurisdiction? | States generally enjoy exclusive authority to license professional services within their boundaries. Emergency planning should eliminate or deal with potential restrictions on the activities of federal professionals during emergencies. This question raises the broader issue of whether, in an emergency, licensed federal employees working in a host jurisdiction can practice specialties in which no jurisdiction has licensed them. |

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| | 35. Can the federal government use or authorize the use of unlicensed personnel to perform professionally regulated functions in an emergency in the host jurisdiction? | This question asks whether, in the context of an organized emergency response (as opposed to the roadside “good Samaritan”), the federal government may authorize unlicensed workers to perform duties traditionally performed only by licensed professionals in the host jurisdiction. States generally enjoy exclusive authority to license professional services within their boundaries. Emergency planning should eliminate or deal with potential restrictions on the activities of federal professionals during emergencies. This question should also be explored for non-federal employee professionals volunteering their services to federal agencies. |
| | 36. May the federal government impose quarantine orders on residents inside a state’s jurisdictional boundaries? | The federal government enjoys some authority to control the movement of persons within states to the extent that they pose a threat to the health of the armed forces. ^{xxi} Generally, however, federal government personnel (e.g., Public Health Service) are limited to cooperating with and aiding states and local authorities in the enforcement of their quarantine and other health regulations. ^{xxii} In extreme cases the director of CDC may take “reasonably necessary measures” to prevent spread of disease between states if local efforts are “insufficient”. ^{xxiii} |
| State | | |
| | 37. Who has authority over federal, neighboring state and local employees responding to emergencies within the state? | The National Incident Management System (NIMS) provides a structure for integrating emergency response activities and does not change legal duties or responsibilities. NIMS suggests, for example, that in multi-jurisdictional incidents “resources [which includes personnel] are best managed under the agencies that normally control them.” ^{xxiv} This question should also be addressed with respect to volunteers. States should refer to their EMACs, if applicable ^{xxv} , which generally provide that personnel’s regular commanders retain authority. |
| | 38. Who has authority to impose personal control measures (e.g., quarantine and isolation) during an emergency? | States enjoy primary authority to protect the public’s health and welfare under the “police powers” constitutionally reserved to the states by operation of the 10 th Amendment to the United States Constitution. States may have both state-level legislation and locality-driven ordinances providing overlapping authority. |
| | 39. May out-of-state state personnel practice their licensed or regulated professions in responding to an emergency in the host jurisdiction? | States should refer to their EMACs, as applicable. ^{xxvi} |
| | 40. May state personnel practice their licensed or regulated professions in responding to an emergency in a neighboring jurisdiction? | States generally enjoy exclusive authority to license professional services within their boundaries. States should refer to their EMACs, as applicable. |
| | 41. May the State use out-of-state unlicensed personnel? | States generally enjoy exclusive authority to license professional services within their boundaries. |
| | 42. May out-of-state members of licensed or regulated professions practice in related specialties in responding to emergencies in the host jurisdiction? | This question relates to licensed professionals practicing particular specialties in which they are not licensed. |

| Local | | |
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| | 43. Who has authority over local government personnel if they participate in emergency response in a neighboring jurisdiction? | Ordinarily employees are accountable only to their employers. NIMS and local emergency assistance compacts describe incident management structures. |
| | 44. Do local authorities have authority over the actions of non-local volunteers operating within the locality? | This question should be addressed by NIMS and state and county emergency plans. |
| | 45. When can volunteer emergency personnel be asked to perform duties outside the locality? | Many localities rely on volunteer agencies (fire departments, EMS, etc.). Local jurisdictions should determine whether these personnel may be asked to fulfill a county's mutual assistance obligations outside their jurisdictions. |
| | 46. How should the locality deal with using unlicensed volunteer personnel from outside the jurisdiction? | States generally enjoy exclusive authority to license professional services within their boundaries. |
| | 47. Can personnel committed under emergency plans be sent out of the locality? | This question raises the operational issue of how mutual assistance activities relate to local regulations regarding duty hours, locations, etc. |
| C. Administration | | |
| Federal | | |
| | 48. Can a state be compelled to accept federal emergency assistance? | States are typically anxious to request federal emergency assistance in order to access federal personnel and material resources. Yet, federal and state governments may differ in their desired approaches to a public health emergency. As a legal matter, the federal government generally does not enjoy authority to abrogate a state's power to protect the public's health and welfare ^{xxvii} though it does have power to regulate interstate commerce. The Stafford Act, for example, requires that a state request assistance. ^{xxviii} The federal government enjoys broad authority with respect to interstate commerce. It could be hypothesized that, in an extreme case, the federal government might assume control if a state was unable to fulfill its constitutional role of protecting the public's health despite significant federalism concerns. |
| | 49. Can state borders be closed by the federal government and under what authority? | The federal government enjoys some authority to control the movement of persons within states to the extent that they pose a threat to the health of the armed forces. ^{xxix} Generally, however, federal government personnel (e.g., Public Health Service) are limited to cooperating with and aiding states and local authorities in the enforcement of their quarantine and other health regulations. ^{xxx} In extreme cases the Director of CDC may take "reasonably necessary measures" to prevent spread of disease between states if local efforts are "insufficient". ^{xxxi} As a legal matter, the federal government generally does not enjoy authority to abrogate a state's power to protect the public's health and welfare ^{xxxii} though it does have power to regulate interstate commerce. The Stafford Act, for example, requires that a state request assistance. ^{xxxiii} It could be hypothesized that, in an extreme case, the federal government might assume control if a state was unable to fulfill its constitutional role of protecting the public's health despite significant federalism concerns. |
| State | | |

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| | 50. What notification procedures exist when ID outbreaks or public health emergencies are suspected or confirmed? | Timely reporting of information derived from disease surveillance plays an important part in detecting incipient outbreaks. Disease reporting by states is largely voluntary and often complicated by perceived health information privacy concerns. Routine information sharing builds trust between equivalent public health agencies across state boundaries. Specific state legislative or regulatory direction to share identifiable information with partners can further encourage information sharing, though such legal specification is not required to permit data sharing under the HIPAA Privacy Rule. ^{xxxiv} |
| | 51. What kinds of health information can be shared with state and/or federal counterparts? | Timely reporting of information derived from disease surveillance plays an important part in detecting incipient outbreaks. Disease reporting by states is largely voluntary and often complicated by perceived health information privacy concerns. Routine information sharing builds trust between equivalent public health agencies across state boundaries. Specific state legislative or regulatory direction to share identifiable information with partners can further encourage information sharing, though such legal specification is not required to permit data sharing under the HIPAA Privacy Rule. ^{xxxv} |
| | 52. How does NIMS affect state officials' authority to implement disease control measures? | The National Incident Management System ("NIMS") "represents a core set of doctrine, concepts, principles, terminology, and organizational processes to enable effective, efficient, and collaborative incident management at all levels." ^{xxxvi} NIMS is a management system and is not designed to alter states' fundamental legal rights and responsibilities. |
| | 53. Can a state close its borders to interstate traffic? | See, e.g., questions #45, #47, and #65. States almost certainly lack authority to close their borders to interstate traffic in the absence of federal cooperation or assent. |
| | 54. Can a state be compelled to accept federal emergency assistance? | States are typically anxious to request federal emergency assistance in order to access federal personnel and material resources. Yet, federal and state governments may differ in their desired approaches to a public health emergency. As a legal matter, the federal government generally does not enjoy authority to abrogate a state's power to protect the public's health and welfare ^{xxxvii} though it does have power to regulate interstate commerce. The Stafford Act, for example, requires that a state request assistance. ^{xxxviii} |
| | 55. Does NIMS affect state officials' liability? | NIMS does not directly affect questions of liability, which must be resolved under applicable (usually state) law. |
| | Local | |
| | 56. Do local and state agencies share overlapping authorities? | Relationships between state and local authorities vary greatly across the United States. In some jurisdictions, a particular city health department may operate legally independently from the state health department. ^{xxxix} In others, local health departments may be considered quasi-state agencies. |
| | 57. Can local authorities close their jurisdictions to neighbors? | Local officials should review their charters, state legislation and state constitutions. They should also be aware of their role in accepting refugees or patients in the event of a public health emergency under state and county emergency response plans. |
| | IV. Recovery | |
| | A. Property | |
| | Federal | |
| | 58. What liability does the federal government bear for the malfunction or misuse of federal materials sold or given to the host jurisdiction? | Independent of products liability, under some circumstances an entity providing material for the use of another can be held liable for damages resulting from its use. Limitations on this kind of liability should be clearly understood by federal, state and local officials. |

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| | 59. What liability does the federal government bear for damage to non-federally owned materials transported by the federal government? | An entity receiving and transporting the goods of another should address clearly the scope of its liability. |
| State | | |
| | 60. What liability does the state government bear for the malfunction or misuse of state materials donated to the host jurisdiction? | Independent of products liability, under some circumstances an entity providing material for the use of another can be held liable for damages resulting from its use. Limitations on this kind of liability should be clearly understood by federal, state and local officials. |
| | 61. What liability does the state bear for damage to non-state owned materials transported by the state government at the request of another jurisdiction? | An entity receiving and transporting the goods of another should address clearly the scope of its liability. |
| | 62. How does NIMS affect state officials' liability? | NIMS does not directly affect questions of liability, which must be resolved under applicable (usually state) law. |
| Local | | |
| | 63. What liability does the local government bear for damage to non-locally owned materials transported by the local government at the request of another jurisdiction? | An entity receiving and transporting the goods of another should address clearly the scope of its liability. |
| | 64. What liability does the local government bear for the malfunction or misuse of locally owned materials donated to the host jurisdiction? | Independent of products liability, under some circumstances an entity providing material for the use of another can be held liable for damages resulting from its use. Limitations on this kind of liability should be clearly understood by federal, state and local officials. |
| B. People | | |
| Federal | | |
| | 65. Are federal employees liable to local governments, state governments, the federal government and private parties for actions taken in response to an emergency? | See liability checklist, question #27. Traditionally individuals are not liable to the United States for costs incurred due to their actions or omissions in responding to major disasters or emergencies. ^{x1} |
| | 66. Are federal volunteers working with local governments, state governments, the federal government itself and private parties liable for actions taken in response to an emergency? | See liability checklist, questions #9 and #27. This question is distinct from the issue of unlicensed practice. |

| State | |
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| 67. Under what circumstances are government employees liable to other state governments, federal government and private parties for actions completed in-state in response to an in-state or out-of-state emergency? | See liability checklist, questions #9, #25, and #27. Most, if not all, states have tort claims acts in addition to specific emergency legislation which may bear on this question. Also, states may employ specific statutory provisions immunizing state employees for the performance of discretionary acts and/or providing indemnification. ^{xli} States may also have entered into inter-jurisdictional agreements (e.g., EMACs) which limit state employees' liability to other state governments. ^{xlii} This question should also be considered with respect to activities outside the state. |
| 68. Are state volunteers liable to state government, federal government and private parties for actions completed in-state in response to an in-state or out-of-state emergency? | See liability checklist, questions #9, #25, and #27. In addition to Good Samaritan statutes, some states have enacted specific emergency response legislation. ^{xliii} Further, actions taken in-state may have out-of-state effects. This question should also be considered concerning activities outside the state. |
| 69. Are providers liable to state government, federal government and private parties for actions completed in-state in response to an in-state or out-of-state emergency? | See, e.g., questions #67 and #68. A potentially important issue is whether providers, acting under direction of public health authorities or in connection with emergency response plans, should be characterized as agents of the state. ^{xliiv} This question should also be considered with respect to activities outside the state. |
| 70. What liability does state government bear to volunteers or out-of-state personnel for losses sustained while assisting the state in responding to an emergency? | This question goes both to indemnification of and compensation to non-governmental personnel acting at the request of the state. Potentially it encompasses issues ranging from legal defense costs to workers compensation/disability/life insurance. States should refer to their EMACs, as applicable. ^{xliv} |
| Local | |
| 71. Under what circumstances is a local government employee liable to local government, state government, federal government and private parties for actions completed in-locality or out-of-locality in response to an in-locality or out-of-locality emergency? | See liability checklist, questions #20, #25, #36, and #30,42; question #67. |
| 72. Under what circumstances is a local government volunteer liable to local government, state government, federal government and private parties for actions completed in-locality or out-of-locality in response to an in-locality or out-of-locality emergency? | See liability checklist, questions #20 and #31; question #68 and #69. |

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| | 73. Under what circumstances is a provider liable to local government, state government, federal government and private parties for actions completed in-locality or out-of-locality in response to an in-locality or out-of-locality emergency? | See liability checklist, questions #21 and #29,43; questions #68 and #69. |
| | 74. What liability does the local government bear with respect to volunteers, providers, state, federal or out-of-locality personnel for losses sustained while assisting the locality in responding to an emergency? | See question #70. |
| C. Administration | | |
| Federal | | |
| | 75. Is the federal government liable to local governments, state governments and private parties for federal action taken in response to an emergency? | See liability checklist, questions #13 and #14. Answers to this question should consider the Federal Tort Claims Act. Generally, the federal government is not liable for claims based on discretionary functions or duties of agencies or employees. ^{xlvi} The federal government also refuses liability for claims based on damages caused by the imposition or establishment of a quarantine by the United States, though presumably this does not include alleged violations of due process. ^{xlvii} |
| State | | |
| | 76. Has the state resolved issues regarding the interplay of state workers compensation law and federal law, if any, in reimbursing emergency responders? | States should refer to their EMACs, as applicable. ^{xlviii} This question focuses specifically on workers compensation. A good example of potential complications in the interplay of federal public health emergency planning regulations and state workers compensation systems arose during the smallpox vaccination initiative of 2003. |
| | 77. Has the state addressed choice of law and venue/jurisdiction issues governing interstate and inter-county disputes arising out of emergency response? | The EMAC does not contain explicit procedures for reimbursement and dispute resolution but calls for their development by state parties. ^{xlix} |
| | 78. What provisions exist for the reimbursement of expenses related to evacuees entering or leaving the state? | This issue is considered in the state's EMACs. |
| Local | | |
| | 79. In the event that resources (materials or personnel) are shared with jurisdictional neighbors, have compensatory mechanisms been agreed in advance? | The EMAC does not contain explicit procedures for reimbursement and dispute resolution but calls for their development by state parties. ¹ |

References:

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- ⁱ Available at <http://www.bt.cdc.gov/planning/continuationguidance/index.asp>.
- ⁱⁱ “Emergency Management Assistance Compact” (EMAC), <http://www.emacweb.org>.
- ⁱⁱⁱ E.g., Md. Code Ann., Health–General §18-903 (2004).
- ^{iv} EMAC Art. V.
- ^v EMAC Art. X.
- ^{vi} See, e.g., Jason W. Sapsin et al., *SARS and International Legal Preparedness*, Temple L. Rev. (forthcoming 2004).
- ^{vii} E.g., James G. Hodge, Jr. et al., *The HIPAA Privacy Rule and Bioterrorism Planning, Prevention, and Response*, 2 *Biosecurity and Bioterrorism* 73-80 (2004).
- ^{viii} See CDC, Continuation Guidance for Cooperative Agreement on Public Health Preparedness and Response for Bioterrorism – Budget Year Five, Attachment A, Focus Area A: Preparedness Planning and Readiness Assessment (2004).
- ^{ix} E.g., Me. Rev. Stat. Ann. tit. 37-B, §935 et seq. (West 2003).
- ^x E.g., a group of states composed of Nebraska, Iowa, Kansas, Missouri, North Dakota, South Dakota, Wyoming, Colorado, Utah and Montana.
- ^{xi} EMAC Art. III (B).
- ^{xii} “Model Intrastate Mutual Aid Legislation”, the National Emergency Management Association (2004).
- ^{xiii} 42 U.S.C.A. §5149(a) (West 2004).
- ^{xiv} 42 U.S.C.A. §5196(i) (West 2004).
- ^{xv} E.g., *Ft. Leavenworth R. Co. v. Lowe*, 114 U.S. 525, 29 L Ed. 264, 5 S Ct 995 (overruled on other grounds) (involving federal real property).
- ^{xvi} U.S. Dep’t of Homeland Security, National Incident Management System (March 1, 2004) at ix.
- ^{xvii} 26 Am. Jur. 2d Eminent Domain §70.
- ^{xviii} E.g., 26 Am. Jur. 2d Eminent Domain §188.
- ^{xix} 26 Am. Jur. 2d Eminent Domain §192.
- ^{xx} See 13 Am. Jur. 2d Buildings §6.
- ^{xxi} 42 U.S.C.A. §§ 264, 266 (West 2004).
- ^{xxii} 42 U.S.C.A. §243 (West 2004).
- ^{xxiii} 42 C.F.R. §70.2 (2002)
- ^{xxiv} The National Incident Management System, App.A, page 71 (2004).
- ^{xxv} EMAC Art. IV.
- ^{xxvi} EMAC Art. V.
- ^{xxvii} U.S. Const. 10th Amend.
- ^{xxviii} 42 U.S.C.A. 5121 et seq. (West 2002)
- ^{xxix} 42 U.S.C.A. §§ 264, 266 (West 2004).
- ^{xxx} 42 U.S.C.A. §243 (West 2004).
- ^{xxxi} 42 C.F.R. §70.2 (2002)
- ^{xxxii} U.S. Const. 10th Amend.
- ^{xxxiii} 42 U.S.C.A. 5121 et seq. (West 2002)
- ^{xxxiv} E.g., James G. Hodge, Jr. et al., *The HIPAA Privacy Rule and Bioterrorism Planning, Prevention, and Response*, 2 *Biosecurity and Bioterrorism* 73-80 (2004).
- ^{xxxv} E.g., James G. Hodge, Jr. et al., *The HIPAA Privacy Rule and Bioterrorism Planning, Prevention, and Response*, 2 *Biosecurity and Bioterrorism* 73-80 (2004).
- ^{xxxvi} U.S. Dep’t of Homeland Security, National Incident Management System (March 1, 2004) at ix.
- ^{xxxvii} U.S. Const. 10th Amend.
- ^{xxxviii} 42 U.S.C.A. 5121 et seq. (West 2002)
- ^{xxxix} E.g., Baltimore City in the State of Maryland.
- ^{xl} 42 U.S.C.A. §5160(b) (West 2004).
- ^{xli} Mo. Rev. Stat. §105.711 (2000).
- ^{xlii} EMAC Art. VI.

^{xliii} E.g., Md. Code Ann., Public Safety §14-3A-02 et seq. (2004).

^{xliv} E.g., Md. Code Ann., Health - General §18-907(c) (2004)

^{xlvi} EMAC Art. VIII.

^{xlvii} 42 U.S.C.A. §5148 (West 2002).

^{xlviii} 28 U.S.C. §2680(f) (West 2002).

^{xlix} EMAC Art. VIII.

¹ EMAC Art. III (B).

¹ EMAC Art. III (B).