

Public Health Emergency Law

CDC Foundational Course for Front-line Practitioners

Developed by

U.S. Centers for Disease Control and Prevention



Introductions



Course Objectives

By the end of this course, participants will understand:

- How public health and emergency management work together in public health emergencies
- How legal powers and restraints apply in public health emergencies
- Key legal implications of actions taken in response to, or in recovery from, public health emergencies



What are Public Health Emergencies?

Two Major Categories

- **Stand-Alone Public Health Emergencies**
 - Public health emergencies without other emergency conditions
 - E.g. Epidemic or pandemic
- **Combined Public Health Emergencies**
 - Additional, complicating emergency conditions exist
 - E.g., earthquake/hurricane/tornado impacts water, sanitation and/or medical infrastructure



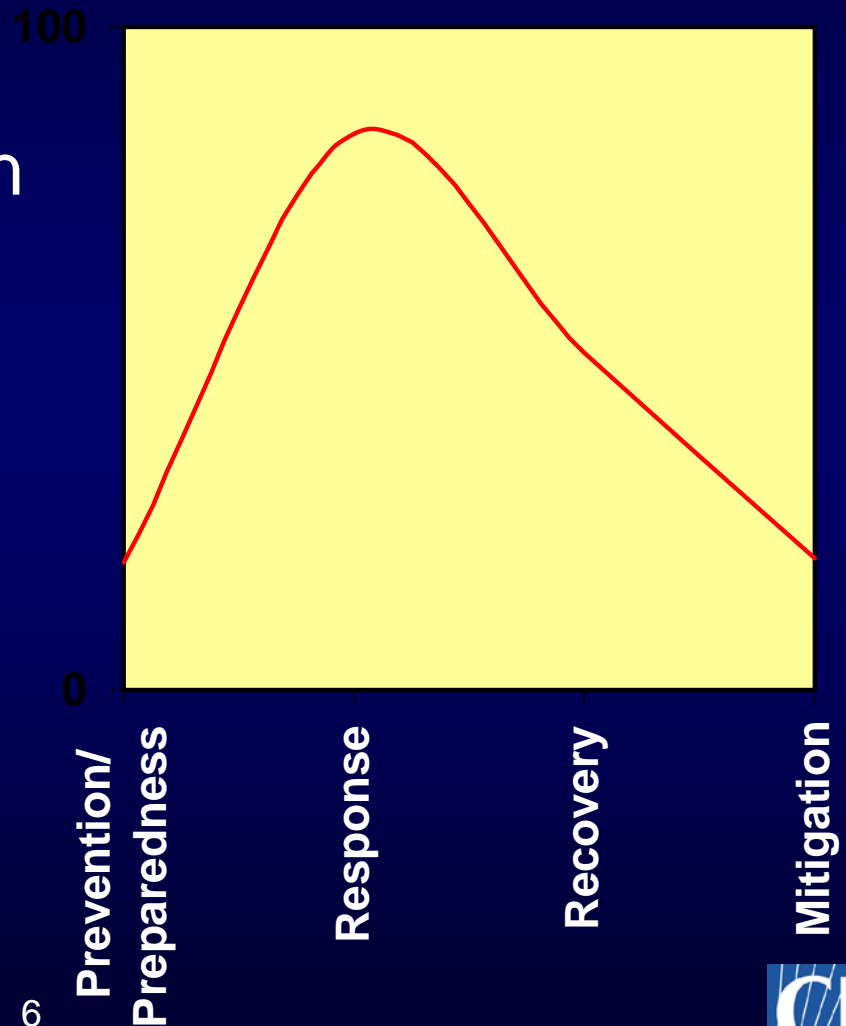
Overarching Concepts

- Integrate public health agencies into emergency management planning, preparedness, and response
- Know the key laws, principles, and issues
- NOTE: This course is NOT legal advice. Consult your legal counsel to apply course materials in your jurisdiction



Government Authority to Act in Emergencies: Model

- Legal *authority* is at its peak at the height of an emergency
- As crisis comes under control, legal authority is subject to greater legal constraints
- *Attention then shifts to* responsibility for costs and damages/losses



Public Health Emergency Law

- **Unit 1: Course Introduction and Basic Concepts**
- Unit 2: Legal Issues: Detecting and Declaring Emergencies
- Unit 3: Emergency Powers I: Protection of People
- Unit 4: Emergency Powers II: Management of Property
- Unit 5: Emergency Powers III: Mobilizing Professional Resources
- Unit 6: Advanced Issues Seminar



Public Health Emergency Law

CDC Foundational Course for
Front-Line Practitioners

Unit 1

**Course Introduction and
Basic Concepts**



Disclaimer

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



Unit 1 Objectives

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

1. Recognize key structures of public health and emergency management
2. Identify the plans under which public health & emergency management work together
3. Understand the fundamentals of public health emergency law



Objective 1.1

Recognize Key Structures of Public Health and Emergency Management



Relationship of Public Health to Medical Care

Medical care treats **individuals** and contributes to the overall health of the community.

Public health protects the **whole community** and **focuses on prevention**:

- Protects air, water, and food quality
- Controls disease outbreaks
- Collects information on health needs
- Provides accurate information to the community



Partners in Public Health Emergencies

PUBLIC HEALTH

- State & Local Agencies
- Federal Agencies
- Public and Private Facilities

MEDICAL CARE

- Medical Personnel – Public & Private
- Hospitals
- EMS
- Health Care Insurers



State/Local Public Health Structures

Public health authority varies by state & locality:

- Agencies
 - Some put all health services under one umbrella agency
 - Others have separate agencies for public health, mental health, Medicaid, EMS, etc.
- Officials
 - Authorities vested in Governor, health officer, or board



Federal Public Health Partners

- Department of Health & Human Services
 - CDC, FDA, NIH, IHS and other agencies
 - U.S. Public Health Service Commissioned Corps
 - Strategic National Stockpile (SNS)
- Department of Homeland Security
 - National Disaster Medical System (NDMS)

AND IN CATASTROPHIC HEALTH EMERGENCIES—

- Departments of Defense, Veterans Affairs



Public Health Coordination

- Agencies must work together for effective health care delivery in an emergency
- Coordination may be required across many local, state, and Federal agencies
- Public, private, and non-profit entities face complex, different risks in emergencies



Emergency Management System Begins Locally

City/County Resources:

- Fire/ emergency medical services (EMS)
- Police
- Local departments of health
- Hospitals and other health care providers
- Office of Emergency Management (OEM)



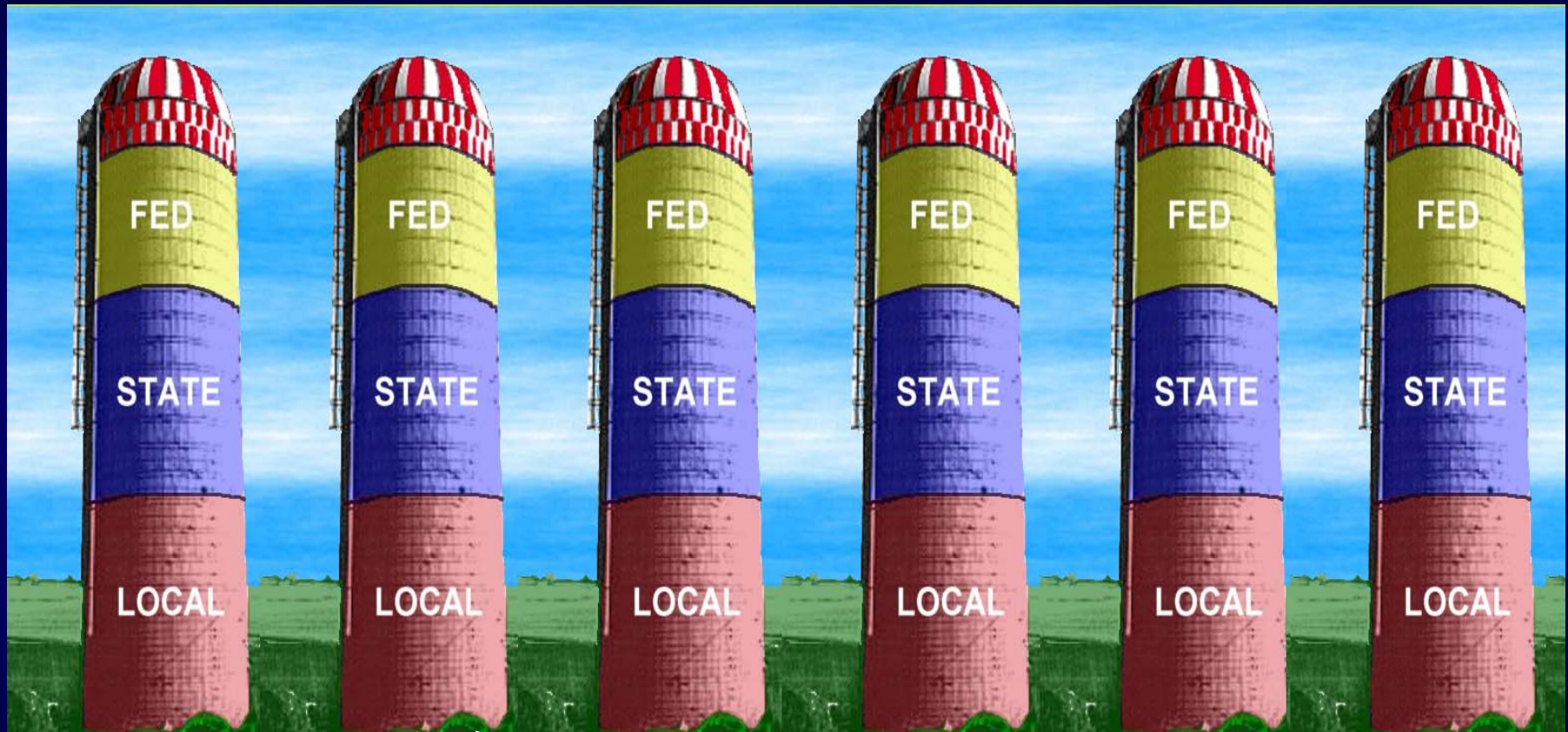
Emergency Management

- State
 - State Police
 - National Guard
 - Department of Health
 - Emergency Management Agency (EMA)
- Federal
 - Dept. of Homeland Security
 - Dept. of Health & Human Services
 - Dept. of Justice (FBI)
 - EPA, Dept. of Treasury (ATF), USDA



***Note:** In this course, “State” includes U.S. territories

The Silos of Federal, State, Local “Legal Preparedness”



Public
Health

Fire/
Emergency
Medical
Services

Homeland
Security/
Emergency
Mgmt.

Law
Enforcement

Judicial/
Legal
System

Food/
Agriculture



Objective 1.2

Identify the Plans Under Which
Public Health and Emergency
Management Work Together



Discussion Question:

How do Public Health and
Emergency Management work
together in your jurisdiction?



Local Incident Management

Incident Command System (ICS)

- Model for first responders (EMS, fire, police) for command, control, and response coordination
- Coordinates agencies working toward shared goals: stabilize the incident, and protect life, property & environment



Local Incidents - Scale and Complexity

- All emergencies start locally
 - As scale/complexity increase, state and federal support may be needed
 - Larger incidents require increased coordination and information flow across agencies
- Managing complex incidents requires...
 - Data to assess the evolving situation
 - Tools to analyze and interpret the data
 - Interoperability to share information/decisions across diverse agencies and IT systems
 - Resources: what, where, and how to supply



Managing Large Scale Emergencies

- Homeland Security Presidential Directive-5 (HSPD-5) directs Homeland Security Secretary to develop and administer:
 - National Incident Management System (NIMS)
 - National Response Plan (NRP)
- To ensure effective management of large-scale emergencies



NIMS Overview

- A consistent, nationwide approach for incident management
- Requires Federal, State, tribal, and local governments to work together before, during, and after incidents
- Involves preparing for, preventing, responding to, and recovering from domestic incidents
- All causes, sizes, and complexities of incidents



NIMS Overview

NIMS is...

- A core set of:
 - Doctrine
 - Concepts
 - Principles
 - Terminology
 - Organizational processes
- Applicable to all hazards

NIMS is not...

- An operational incident management plan
- A resource allocation plan
- Designed to be a terrorism/WMD-specific plan
- For addressing international events



NIMS Compliance

- All Federal departments and agencies required to adopt NIMS by Sept. 30, 2005
- State and local organizations must adopt NIMS to receive Federal preparedness grants and contracts by FY 2005
 - **Adopting the basic tenets of the Incident Command System (ICS) constitutes initial compliance**
- DHS to publish additional standards, guidelines, and compliance protocols
 - **NIMS Integration Center (DHS/FEMA)**



National Response Plan (NRP)

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



Structure of NRP

- Base Plan
 - General structures and overviews
- Emergency Support Function (ESF) Annexes
 - Guidance to the 15 ESFs defined by the plan
- Incident Annexes
 - Guidance for specific incident types
- Support Annexes
 - Additional information to guide emergency management
- Appendices: Key definitions and guidelines

NRP Elements

Particularly Important to Public Health

- ESF #8 – Public Health and Medical Services
- ESF #13 – Public Safety and Security
- Incident Annexes:
 - Biological Incident
 - Catastrophic Incident
 - Terrorism Incident Law Enforcement and Investigation



Emergency / Disaster Cycle



KEY NRP DEFINITIONS



“Incident”

- *Occurrence or event*
- *Natural or human-caused*
- *Requires emergency response to protect life or property*
 - *E.g. Major disasters and emergencies, including public health emergencies, terrorist attacks, floods, hazardous materials spills, nuclear accidents, earthquakes, hurricanes, tornadoes, war-related disasters, and other events requiring an emergency response*



“Incident of National Significance”

An actual or potential high-impact event that requires a coordinated and effective response by an appropriate combination of, Federal, State, local, tribal, nongovernmental, and/or private sector entities...

In order to save lives and minimize damage, and provide for long-term community recovery and mitigation activities.



“Prevention”

Actions taken to avoid an incident or to intervene to stop an incident from occurring



“Preparedness”

The range of deliberate, critical tasks and activities necessary to build, sustain, and improve the operational capability to prevent, protect against, respond to, and recover from domestic incidents.



“Response”

- *Activities that address the short-term, direct effects of an incident.*
- *Includes immediate actions to save lives, protect property, and meet basic human needs.*
- *Includes execution of emergency operations plans and incident mitigation to limit loss of life, personal injury, property damage, and other serious outcomes.*



“Recovery”

Development, coordination, and execution of service- and site-restoration plans for impacted communities, as well as the reconstitution of government operations and services through individual, private-sector, nongovernmental, and public assistance programs



“Mitigation”

- *Activities designed to reduce or eliminate risks to persons or property or to lessen the actual or potential effects or consequences of an incident.*
- *May be implemented prior to, during, or after an incident.*
- *Often developed in accordance with lessons learned from prior incidents.*



“Crisis Management”

Measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, and/or resolve a threat or act of terrorism

- Predominately law enforcement function
- Requirements of Crisis Management and Consequence Management now combined in NRP



“Consequence Management”

Measures to protect public health and safety, restore essential government services, and provide emergency relief to governments, businesses, and individuals affected by the consequences of terrorism

- Predominately emergency management function
- Requirements of Consequence Management and Crisis Management now combined in NRP



Objective 1.3

Understand the
Fundamentals of Public
Health Emergency Law



Laws Apply to People or Entities

- When asking for a legal analysis of a situation – must ask regarding the legal effect *on whom*
 - *Who* gains or loses legal rights, or incurs liabilities?
 - Who has specific exemptions or authorities?
- Slight differences in facts can make major differences in legal result



Sources of Law

OUR FEDERAL SYSTEM

- Constitution (federal/state)
- Statutes (federal/state)
- Common Law (federal/state)
- Regulations/Ordinances (federal/state)
- Executive Orders (federal/state)



Participants in the Legal System

These *independent* institutions will have an impact on emergency response:

- Legislatures
- Courts
- Prosecutors
- Law enforcement
- Administrative agencies/commissions/boards
- Litigants and their counsel

All exist at the federal, state, and local levels



Types of Legal Remedies for Violations

- Criminal and Civil Fines
- Money Damages
- Civil Liability (treated in Unit 6)
- Injunctions
- Jail



Other Important Legal Consequences

- Loss of Regulatory License
- Loss of Eligibility for Government Funds
- Legislative Investigations and Punishments: Loss of Appropriations, New Legislation



Role of Agency Attorney

- Participate in planning phase
 - Identify appropriate legal powers and potential gaps
 - Shape risk management to minimize potential legal challenges
- Participate in response phase
 - Clarify emerging legal issues
 - Seek court orders
- Participate in after-action phase
 - Diagnose legal issues
 - Shape needed new laws and policies



Unit 1 Summary

You should now be able to:

- Recognize key structures of emergency management and public health
- Identify the plans under which public health and emergency management work together
- Understand the fundamentals of public health emergency law



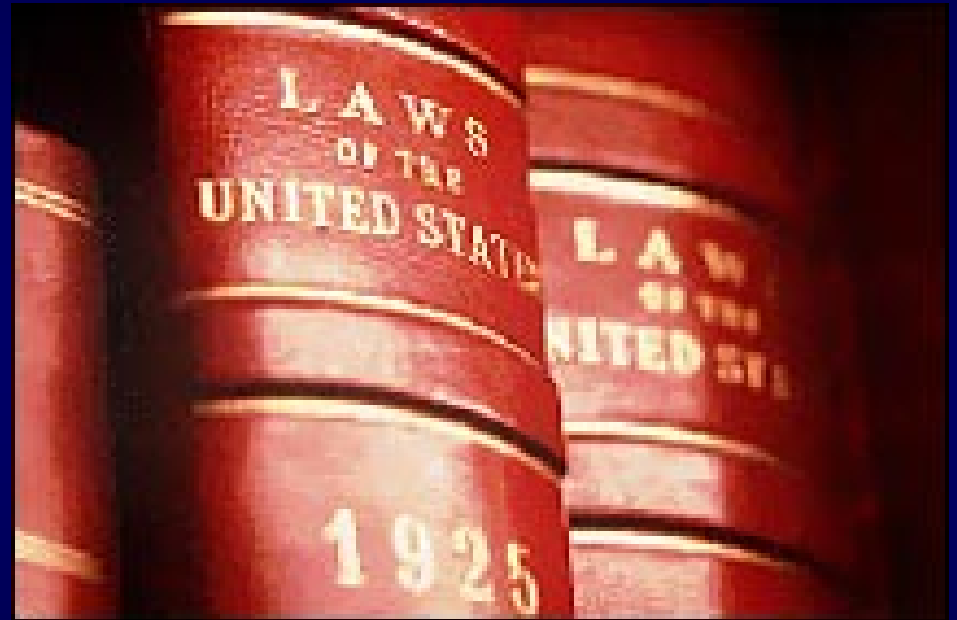
Next Segment

How and when does a jurisdiction “declare” that help is needed?



End: Unit 1

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



www.cdc.gov/phlp

