

Public Health Emergency Law

CDC Foundational Course for Front-line Practitioners

Developed by

U.S. Centers for Disease Control and Prevention



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



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Unit 2

Legal Issues: Detecting and Declaring Emergencies



Disclaimer

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Unit 2 Objectives

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

1. Understand how to collect information for surveillance of impending health emergencies while respecting legal and privacy concerns
2. Recognize the significance of emergency “declarations” for public health officials and emergency managers
3. Understand the powers, assistance and resources triggered by state and federal emergency declarations



Objective 2.1

Understand How to Collect
Information for Surveillance of
Impending Health
Emergencies while
Respecting Legal and Privacy
Concerns



Hypothetical Example

Time Frame

Day 0: Everything normal

Day 2: Big spike in flu-like symptoms

*Day 3: Disease serious:
Several patients in coma;
public health office
investigates contacts,
asks for CDC help*

Actions Underway

- Monitor mandatory reports of listed diseases
- Looking for unusual symptoms/concentrations
- Report triggers inquiries
- PH requests case records & sends alert re symptoms
- PH investigates contacts for epidemiological info
- Alerts CDC/other states for info re symptoms
- Asks for CDC investigators

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Hypothetical Example (Cont.)

Time Frame

Day 4: FBI advises that there is intelligence re: terror attack/ some clinical evidence of non-natural cause

Day 6: 2000 cases reported throughout city. Reports from other jurisdictions.

Preliminary diagnosis of disease and mode of transmission (e.g., pneumonic plague)

Actions Underway

- FBI asserts control of contact/case interviews
- State PH and CDC seek to match case characteristics from multiple cities/states
- FBI information on types of biological agents available to suspected terror group



Mandatory Surveillance

- Law requires mandatory reporting of “listed” diseases
- Laws in some states also require mandatory reporting of:
 - Unusual symptoms or
 - Evidence of unusual concentrations of symptoms



Voluntary Cooperation

- Mandatory reporting requirements may not suffice for effective surveillance
- Additional voluntary reporting may be needed to supplement mandatory reporting
 - Pre-diagnosis/unconfirmed cases
 - “Hunches”
- Other organizations may have information
- Collecting information is still possible as long as the key rules are followed



Public Health Surveillance Requires

Information, samples, specimens, records, and interviews with contacts, provided:

- By patients, doctors, hospitals, insurance companies, and laboratories
- To local, state and federal public health officials, CDC



Information Sharing Restrictions and Exemptions

- Privacy/Information Sharing Restrictions
- Privacy/Information Sharing Exceptions
- Classified (National Security) Information Restrictions



Basic Legal Challenge of Public Health Surveillance

- “Information, samples, specimens, records, interviews with contacts” may be highly confidential
- Information that allows individuals to be identified is subject to numerous legal protections in local, state and federal law



Public Health Surveillance – Information Flow Overview

- A number of basic rules govern flow of personal identifying information
- Rules protect confidentiality and privacy by
 - limiting use of or sharing of personally identifying information
 - requiring that individuals be informed of uses and disclosures of personally identifying information



Information Sharing Restrictions

- Confidentiality of medical information identifying individuals is protected by federal, state, and local laws, whether in the hands of:
 - Private medical providers, laboratories, transaction processors
 - Federal government agencies such as CDC, NIH, or
 - State or local government health agencies
- Privacy rules apply before, DURING, and after a public health emergency



Privacy Basics

- Much information can be shared if stripped of personal identifiers - but also consider indirect identifiers (combination of variables)
- When individual patients/providers can be identified, info must be treated in a confidential manner
- Privacy is guided by many laws, including the federal Health Insurance Portability and Accountability Act (HIPAA), Privacy Act, Freedom of Information Act (FOIA) & Public Health Service Act, along with corresponding state/local privacy laws



Surveillance Information from Health Care Providers

- Before information gets to public health officers, it usually is held by health care providers subject to HIPAA
- HIPAA applies to health care providers, health plans paying for care, and “health care clearinghouses”
- HIPAA regulates uses and disclosures of “protected health information” (PHI) by covered entities



HIPAA Exemptions

PHI cannot be disclosed to any person/institution except when:

- Specific consent is provided, or
- Identifying information is removed, or
- Required by law
 - This means any “mandatory” public health surveillance reporting is permitted by HIPAA



HIPAA Exemptions – Disclosure to Public Health Agencies

- Mandatory disclosures as required by law under 45 CFR 164.512(a)
- Voluntary disclosures to public health are permitted of “minimum necessary information to accomplish the purpose of the disclosure” under 45 CFR 164.512(b)



HIPAA Exemptions – Disclosure to Medical Examiners

- A covered health care provider may disclose protected health information to coroners and medical examiners for:
 - Determining the cause of death
 - Identifying the deceased person
 - For other duties authorized by law



HIPAA Exemptions – Disclosure to Law Enforcement

Disclosures by covered health care providers to law enforcement violate HIPAA unless:

1. Pursuant to court order, subpoena or administrative request
2. To help identify or locate a suspect, fugitive, or missing person, limited to:
 - Name, address, place of birth, SSN, blood type, type of injury, date/time of treatment/death, distinguishing physical characteristics

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HIPAA Exemptions – Disclosure to Law Enforcement (cont.)

3. Disclosure provides relevant limited information about a suspected crime victim, and:
- The individual agrees, or agreement is not possible due to incapacity or other emergency (e.g. WMD event)
 - The information is not intended to be used against the victim
 - Law enforcement activities would be adversely affected by waiting for consent
 - Disclosure is in the best interest of the individual as determined by the health care provider

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HIPAA Exemptions – Disclosure to Law Enforcement (cont)

4. Reporting a crime in an emergency
 - A covered health care provider providing health care in a medical emergency may disclose information if it appears that the disclosure is necessary to alert law enforcement to the commission, nature, location, victims of a crime; and the identity, description and location of perpetrator of a crime, except for abuse, neglect, or domestic violence covered under 45 CFR 164.512(f)(6)(I)
 - Note: This is specific to a report initiated by a health care provider to law enforcement



Information Sharing: “Accounting”

Even when permitted to disclose PHI for public health or law enforcement purposes there are “accounting” requirements (45 CFR 164.515, 164.528)

- *When disclosure is made, the covered entity must keep an “accounting” of the disclosure and be able to give detailed information about it upon request*
- *Exception: if public health or law enforcement requests the “covered entity” in writing not to alert patient to the disclosure, specifying:*
 - *Temporary time limit*
 - *Accounting would impede agency’s activities*
 - *Request must be in writing if time limit exceeds 30 days*



Privacy Rules: Differences Between Federal FOIA and Federal Privacy Act

Philosophy of the Freedom of Information Act (FOIA):

- Open government & public access to agency records
- Federal officials must share agency records in their files unless exempted from FOIA

Philosophy of Federal Privacy Act:

- Government should protect privacy of the individuals that the government has collected information on
- Federal officials must not share Privacy Act-protected info in their files unless authorized by the Act



Federal FOIA and Privacy Act Commonality

- FOIA

- No disclosure required of information in personnel/medical files & similar files that would be a clearly unwarranted invasion of personal privacy
- Balancing test necessary: harm of invasion of privacy vs. public benefit of release

- Privacy Act

- Never prohibits a disclosure that FOIA requires



Information Sharing: Sample State Health Privacy Law

- Illinois Law:
 - Prohibits disclosure of “Personal Identifying Information” except with consent or as necessary for treatment or payment/ insurance
 - Also except “as otherwise authorized or required by law” – e.g. for public health or law enforcement purposes
- Personal identifying information includes names, addresses, symptoms, diagnoses, contacts



Privacy Rules: Sample State FOIA Law

- State FOIA Law:
 - Most states have a generic FOIA law patterned after the federal one – but with differences
 - Usually **REQUIRES** disclosure of information unless disclosure is exempt



Privacy Rules:

Sample State Privacy Law

- State Privacy Law prohibits disclosure of certain personally identifying information from state files
 - Including medical records
 - Except “as otherwise authorized or required by law”
 - e.g. for public health or law enforcement purposes



Privacy Rules:

Sample State Public Health Law - Illinois

Illinois has state statutory provisions for public health information

- Generally prohibits disclosure except
 - Statistical information
 - Partner notification
 - Epidemiologic investigations
 - Subpoena or court order



Privacy Rules:

Sample State Law Exemptions - Illinois

- Under Illinois law, when disclosures are permitted, they must be:
 - To authorized recipients
 - Police, public health officials, CDC
 - For particular purposes, such as:
 - for public health purposes, or for law enforcement
 - Limited to information required for those purposes
- Penalties for unauthorized disclosures include fines and/or jail



Privacy Rules: Classified National Security Information

- What PH info might be classified?
 - Human intelligence on location or type of biological agent to be used in WMD attack, when disclosure would jeopardize source
 - Results of contact interviews of patients in the early stages of an event, when public disclosure might prematurely alert terrorists to FBI involvement
- Classified information can potentially impede detection and response



Information Restrictions: Implications of Classified Information

- Classification means it is Illegal to provide the classified information to persons who do not possess valid clearance
- Very few public health officers have clearance
- The emergency management function of each state should have at least one cleared person
- Criminal penalties can be severe for unauthorized sharing of classified information



Objective 2.2

Understand the Significance
of Emergency “Declarations”
to
Public Health Officials and
Emergency Managers



Basic Definitions: Declarations

What are Declarations?

- Public announcements
- Legal determinations
 - Made by an authorized government official
 - Triggering special emergency powers
 - Allowing expenditure of emergency funds



Importance of Declarations Differs in PH and EM Disciplines

- Public Health:
 - Declaration is frequently optional
 - Officials have strong powers to act without declaring “public health emergency”
 - “Public Health Emergency” declarations do not normally trigger availability of significant funds
- Emergency Management:
 - ***Declaration is critical***
 - Required to “turn on” emergency authorities
 - Required to make costs eligible for reimbursement



Measures Available Without “Emergency” Declaration

- Public health officials, both state and federal, generally can exercise principal health authorities to control communicable disease without “declaring” public health emergency, including:
 - Quarantine/isolation
 - Travel restrictions
 - Contact tracing
 - Inoculations/medical examinations



State Action Without Declaration

Texas example:

Application of Control Measures to Property

(a) If the department or a health authority has reasonable cause to believe that property in its jurisdiction is or may be infected or contaminated with a communicable disease, the department or health authority may place the property in quarantine for the period necessary for a medical examination or technical analysis of samples taken from the property to determine if the property is infected or contaminated.



Federal Assistance Without Declaration

- The following federal public health resources may be available even without federal emergency declaration:
 - National Disaster Medical System “NDMS”
 - Strategic National Stockpile
 - CDC assistance in epidemiological investigations



Declaration Analysis

- Is the emergency situation current or merely threatened?
- What resources are needed to address this?
 - Can they be obtained without declaration?
 - Would a declaration trigger them?
- Why avoid the declaration?
 - Media impact of declaration?
 - Public panic?
 - Credibility: perception of crying “wolf”
- Why request a declaration?
 - Need financial assistance or special authority?



Objective 2.3:

Understand the Powers,
Assistance and Resources
Triggered by State and
Federal Emergency
Declarations



Emergency and Disaster Declarations

Many types of declarations:

- Level of government: local, state, federal
- Geographic area: part of a city, entire city, county, region, or a state
- Type of event:
 - Any threat to life, health, safety, property
 - Specific threat: public health, drought, fire, insurrection



Principal Declarations for Public Health Emergencies

- Declarations provide particular powers to particular governments/officials
- Multiple declarations are common
 - State level:
 - State of Emergency and
 - Public Health Emergency
 - Federal level:
 - Public Health Emergency and
 - Stafford Act Emergency or Major Disaster



Governor's Declaration of State of Emergency

- Normally a declaration is independent of a Public Health Emergency, and is based on sovereign police power
- Activate emergency plans and authorize deployment and use of personnel
- Allows suspending certain regulatory statutes
- Trigger special powers (See Units 4 & 5)
 - To control persons and property
 - To seek mutual aid from other states



Public Health Emergencies: State

State law determines:

- Impact of declaration: What powers are conveyed?
- Who can declare: varies by state
 - Generally, Governor or State Public Health Officer
 - City/County Council or Mayor
 - Local Public Health Officer
- Procedure/information required for declaration
- Duration of declaration
 - E.g., 60 days unless renewed



Definition: Key Federal Declarations

- Public Health Emergency
- Stafford Act “Emergency”
- Stafford Act “Major Disaster”



Public Health Emergencies: Federal

- Secretary of HHS can declare “Public Health Emergency” under Section 319 Public Health Act
 - *Emergency lasts for 90 days, unless earlier terminated, or extended, by Secretary*
- Under declaration, Secretary “may take such action as may be appropriate to respond to the public health emergency”



The Stafford Act

- Stafford Act is the principal discretionary federal authority to assist state and local governments in responding to catastrophic events of any type
- Stafford Act activated by declaration of either
 - A major disaster or
 - An emergency
- The Stafford Act provides for federal authorities and funds



Stafford Act

Emergencies vs. Major Disasters

- “Major Disaster” by definition can exist only for
 - *“Natural catastrophe”, or*
 - *“Regardless of cause, any fire, flood, or explosion”*
- “Emergency” = “any occasion” where assistance is required to lessen or avert “catastrophe”
- “Major Disasters” are legally different from “emergencies” in three big ways:
 - *Ability of federal government to act unilaterally*
 - *Types of events that can be declared*
 - *Grant programs authorized by declaration*



Major Disaster vs. Emergency

- *Where there is a non-natural catastrophe, the President cannot declare a major disaster in the absence of a fire, flood or explosion*
- Can impact of bioterrorism, or radiation in the absence of an explosion, be a major disaster under the Stafford Act, or only an emergency?



“Emergency”

- Both major disaster and emergency declarations authorize the same emergency measures
- Emergency powers – President may:
 - *direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law . . . in support of state and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe.*



Federal Payments to Others in Emergencies Include

- “Provide assistance to affected state and local governments for”:
 - Issuance of warnings of risks or hazards
 - Public health and safety information, including dissemination of such information
 - Provision of health and safety measures, and
 - Management, control, and reduction of immediate threats to public health and safety
- Individual Assistance
 - Payments to individuals for temporary housing, necessary expenses, immediate needs caused by emergency



Major Disaster Provides

The following functions are provided only with a major disaster declaration, and not under emergencies:

- Public assistance
 - Funding of at least 75% of cost of repair, reconstruction, replacement of public facilities damaged by a declared event
- Crisis counseling
- Disaster unemployment
- Legal services
- Relocation assistance
- Food stamps

Stafford Act Declaration Procedure

- Procedure: President makes declaration (of major disaster or emergency) after:
 - *Situation beyond capability of state and local governments*
 - *Governor requests declaration*
- Activates state's emergency plan
 - *Specifies nature of federal assistance requested*
- DHS/FEMA makes recommendation to President based on severity: President alone decides



Unilateral Federal Powers: Stafford Act

- Ability of federal government to act unilaterally
 - President **CANNOT** declare a major disaster without request from Governor
 - President **CAN** declare an *emergency* without request of State Governor *IF*:

“Primary responsibility rests with the United States because the emergency involves a subject area for which, under the laws of the United States, the United States exercises exclusive or preeminent authority.”

- Examples: Federal buildings. Indian tribes. Nuclear materials. WMD/National Defense?



Stafford Act Declarations

- After declaration, Stafford Act actions delegated to DHS/FEMA – coordinated through NRP
- Authorizes use of federal resources “in support of state and local assistance efforts”
- Includes both direct federal assistance and contributions to state or local governments



Applicability of Stafford Act to Public Health Emergencies: Summary

- Either an emergency or major disaster declaration will allow the federal government to mobilize and deliver personnel, equipment, supplies, facilities, and managerial, technical and advisory services to state and local governments in public health emergency
- Disaster Relief Fund:
 - No-year funds
 - Appropriated for any response & recovery activities under the Act
 - Congress has always replenished DRF when needed



Special Duplication Issue – Public Health Emergencies

- DHS/FEMA tends not to activate Stafford Act authorities when there are specialized statutory provisions for specialized emergency response/recovery actions:
 - *Private chemical or oil spills (Superfund)*
 - *Federal Aid Highways (DOT Emergency Fund)*
- Stafford Act has been used for public health:
 - *Emergencies declared for West Nile encephalitis, to fund spraying of mosquitoes*



Unit 2

Summary

- Law clearly authorizes health providers to provide individual medical information to public health officials, and authorizes sharing of that information within guidelines
- Significant powers and assistance may be available even without formal declaration
- Vast resources can be mobilized upon declaration of emergencies



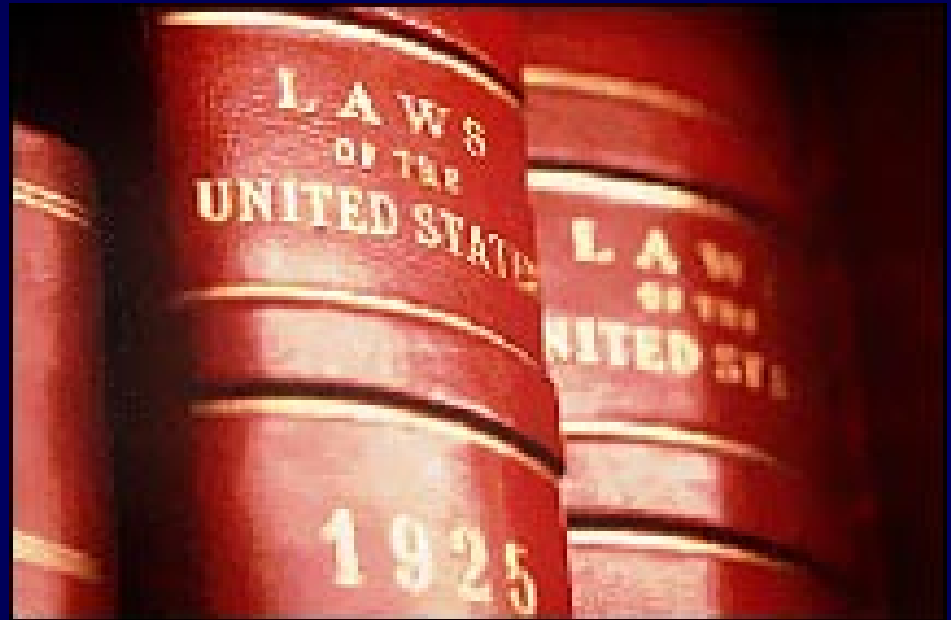
Next Segment

What powers may be involved in protecting people exposed to disease threats during public health emergencies?



End: Unit 2

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



www.cdc.gov/phlp

