

# 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

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- 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 5

## Using Emergency Powers III: Mobilizing Professional Resources



# 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 5 Objectives

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

1. Identify emergency sources of personnel
2. Understand how to access emergency sources of personnel -- and related legal considerations
3. Understand how potential legal and practical limitations might affect use of emergency sources of personnel



# Objective 5.1

## Identify Emergency Sources of Personnel



# *Hypothetical Example (Cont.)*

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## *Recall from Previous Unit:*

- Arrangements were made to establish several medical treatment facilities and drug distribution centers – in armories, schools, and a tent city
- Equipment and drugs have been requisitioned and are being delivered

***BUT***

Most local public health and medical personnel are already either

- Treating patients in the pre-existing hospitals & clinics
- Sick themselves and unable to report



# *Hypothetical Example (Cont.)*

## *National Response Plan Deployed*

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For incidents of this magnitude:

- State and federal emergencies declared
- Joint Field Office established
  - Principal Federal Official
  - Federal and State Coordinating Officers
- HHS coordinating all federal health response actions under ESF 8
  - State health counterpart coordinating state health response actions
  - **NOTE: Onsite Incident Commander retains authority – has system to obtain resources**



# Emergency Sources of Personnel: Operational & Logistical Issues

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- Before identifying resources, key questions must be answered
  - What categories of personnel are needed?
  - How many in each category are needed?
  - Where are they needed?
  - What equipment will they need?
  - Where can these personnel be found?



# Emergency Sources of Personnel: Overview

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- Many ways to obtain emergency personnel
  - Options will differ in the legal arrangements for activating payment, **liability**, licensing
- Preparation is key to acquiring personnel in an emergency
  - Make arrangements in advance
  - Test these arrangements through exercises



# Sources of Potential Liability When Mobilizing Personnel

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- Liability for *injuries to* “added” personnel
  - Workman’s Compensation
    - Covers any injury of employee regardless of fault
    - Damages limited (no punitive, non-economic damages)
  - Tort / Negligence Liability:
    - Injured employee sues *other* potential defendants
- Liability to 3rd party for *losses/injuries caused by* “added” personnel



# Discussion Question

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What are the resources you would plan to use in a catastrophic health event – and how would you obtain them?



# Sources of Emergency Personnel: State & Local Government

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- State Employees
  - State public health personnel
  - State hospitals
  - State Police/State EMS
  - National Guard called up by Governor
- Local Government Employees
  - Local public health personnel
  - Municipal hospitals
  - Police / Fire / EMS



# Sources of Emergency Personnel: Federal

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- Federal Employees – full-time and surge
  - Public Health Service
  - National Disaster Medical System (NDMS)
  - Department of Veterans Affairs (VA)
  - Department of Defense/Army
  - National Guard (if federalized)



# Sources of Emergency Personnel: Non-Government

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- Voluntary Organizations – e.g., Red Cross
- Non-governmental “Mutual Aid”
  - Non-profit hospitals, clinics
  - Academic/medical research centers
- For-profit institutions
  - Hospitals, clinics, HMOs, labs, individual doctors or group practices, veterinarians, pharmacists
- Contractors
- Volunteers



# Sources of Emergency Personnel: Citizen Corps/Medical Reserve Corps

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- Citizen Corps: a national set of programs giving volunteer opportunities for public in event of emergency
  - *National programs are under DHS*
  - *State programs under state Citizen Corps Councils*
- Medical Reserve Corps is the Citizen Corps program for medical/public health personnel
  - National program in conjunction with HHS
  - *State/local programs partner public health departments with Citizen Corps Councils*



# Objective 5.2

Understand How to Access  
Emergency Sources of  
Personnel -- and Related  
Legal Considerations



# Arrangements for Accessing Emergency Sources of Personnel

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## Basic Options:

- Deploy existing local, state & federal employees
- Mutual Aid
  - Intrastate, interstate, regional, international
- Use volunteers
- Hire new state/local personnel
- Contract for services



# Accessing Emergency Personnel: Deploying Existing State & Local Employees

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- Most practical option
  - Public employees already in place, with defined rights, duties and protections
  - Mechanisms for management already in place
- Key questions include
  - How to access these resources in emergencies for requirements outside their daily duties
  - How to address daily duties - scale them back or suspend?



# Accessing Emergency Personnel: Deploying Existing Federal Employees

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- Also practical option
  - Public employees already in place, with defined rights, duties and protections
  - Mechanisms for management already in place
- To access these employees:
  - Public Health Service employees can be requested of HHS by the state public health department
  - Other Federal employees can be requested by State Emergency Management through FEMA



# Deploying Existing Federal Employees: Public Health Service

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- Public Health Service Commissioned Corps and Reserve Corps
  - Federal employees in other jobs – “activated” for response to public health threats
  - Deployed through HHS



# Deploying Existing Federal Employees: National Disaster Medical System

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- National Disaster Medical System (NDMS)
  - Federal, state and local health professionals
  - Includes medical (DMAT), nursing (NNRT), veterinary (VMAT), mortuary (DMORT) & pharmacy (NPRT)
  - Trained/equipped for catastrophic health events
  - When activated, become “intermittent” federal employees
  - Hired “in accordance with civil service laws”
  - Activated through DHS/FEMA



# Deploying Existing Federal Employees: Defense Department (DoD)

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- Base commanders have discretionary authority to protect life & property
  - Limited deployments of uniformed services and equipment may be available through local/state Defense Liaison Officers, where applicable
- Major DoD deployments in emergency situations coordinated through DHS/FEMA
  - DoD maintains liaisons with DHS/FEMA to assist in identifying military assets to assist in major disasters and emergencies



# Deploying Existing Federal Employees: Health Professionals in Other Agencies

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- Department of Veterans Affairs
  - Under Stafford Act, VA hospital facilities and personnel can be directed to assist state and local emergency response efforts
  - VA: 4 Medical Emergency Preparedness Centers
  - To provide hospital care and medical services in an emergency or disaster
- EPA
  - Specialized chem/enviro response teams
  - CERCLA/Superfund authority provides for long-term cleanup
  - Activated through National Response Plan Emergency Support Functions



# Accessing Emergency Personnel: Mutual Aid

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## What is Mutual Aid?

- Assistance rendered by one government entity to help another government entity respond to emergency conditions
- Tradition – “neighbor helping neighbor”
  - During war of 1812, towns on U.S.–Canada border helped each other put fires out even though their respective countries were at war



# Mutual Aid: Key Characteristics

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1. Generally by written agreement
  - Agreements cover:
    - Activation Procedures
    - Liability, employment and compensation issues
    - Federal reimbursement where appropriate
2. “Voluntary” response
  - Generally, mutual aid agreements do not “guarantee” assistance will be provided
    - Indicates desire to respond when requested, if able
    - Specifies terms/conditions/procedures



# Mutual Aid: Key Characteristics

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## 3. Compensated vs. donated

- Most current mutual aid agreements do not provide for compensation or direct reimbursement for small-scale incidents
- In most mutual aid agreements applicable to major responses, requesting jurisdiction reimburses the costs of the responding jurisdiction

## 4. Legal status of mutual aid agreements

- Are legally enforceable



# Intrastate Mutual Aid

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- At least 27 states have formal “intrastate” emergency management compacts
- Draft “Model Intrastate Mutual Aid Agreement” available to states
- Most communities also have “operational” mutual aid agreements for day-to-day cooperation
  - These agreements do not contemplate compensation; may have other liability provisions



# Interstate Mutual Aid: The Emergency Management Assistance Compact

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- “EMAC”
  - Approved by Congressional legislation in 1996
  - Adopted by 48 states and territories, with implementing legislation
- Assistance under EMAC triggered
  - By state declaration of emergency
  - Request for assistance made by a member state
  - Request routed to other member state(s) to fulfill the assistance



# Interstate Mutual Aid: EMAC Cost Sharing

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- Requesting state pays costs to “responding state”
  - Labor costs, material costs, contractor costs
- Federal government will reimburse costs paid to ‘responding state’
  - If President declared an emergency under Stafford Act AND
  - Costs are eligible “emergency measures”



# Accessing Emergency Personnel: Volunteers

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- Types of Volunteers
  - Professional
  - Traditional affiliated
  - Spontaneous from within the affected area
  - Spontaneous from outside the affected area



# Accessing Emergency Personnel: Planning for Volunteers

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- State/local gov't must be prepared to handle influx of volunteers from both legal and operational standpoints
- NRP & most state Emergency Operations Plans have a Volunteer Management Annex covering:
  - How to request volunteers from standard channels
  - How volunteers will be used
  - How to establish staging area/volunteer center
  - How to verify skills, licensing, privileges and credentials, particularly from out of state



# Accessing Emergency Personnel: Hiring New State Employees

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- Advance planning is key: will need systems in place to handle employment issues fast
- State responsible for hiring, supervision, workman's compensation, termination
  - What emergency hiring procedures are available in state?
- State law generally allows waiver of requirement for state medical license



# Hiring New State Employees: Kansas

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- Kansas Emergency Management Act vests Governor with power to handle emergencies by:
  - Suspending any state/local law or regulation
  - Directing all state & local agencies
  - Transferring supervision and personnel of state departments
  - Re-delegate any of this authority to specific subordinates (i.e. the adjutant general)



# Accessing Emergency Personnel: Contracting For Services

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- Contracting for services is another method to arrange for resources
- Many states allow for expedited contracting under declared emergencies
- Consult qualified attorney and/or state procurement officer for state specifics



# Accessing Emergency Personnel: Priority Contracts for Services

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## *FEDERAL AUTHORITY*

- Where preexisting contractual obligations preclude a private service provider from providing goods or services
  - Defense Production Act authorizes federal government to require a private company to enter into contract and to give priority to that contract over all other existing contracts
  - Potential use: Contracting with care providing organizations
- Consult with legal counsel



# Accessing Emergency Personnel via Defense Production Act

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- Applications for priority contracting of Public Health resources should be made to Secretary of HHS (EO 12919)
- Contract must be found “necessary for national defense” or “emergency preparedness” by Secretary DHS
- Act protects against liability for breach of contracts delayed by compliance with the priority order



## Objective 5.3

Understand How Potential Legal  
and Practical Limitations Might  
Affect Use of Emergency Sources  
of Personnel



# Emergency Sources of Personnel: Potential Legal Issues

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- What limitations must be addressed to obtain emergency personnel?
- What licensing issues must be addressed?
- Who is the employer?
- Who is responsible for errors/injuries?



# Addressing Limitations: Obtaining Emergency Personnel

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- Malpractice
- Volunteer Protection Act of 1977
- Good Samaritan laws
- Federal/state employees
- EMAC
- Voluntary NGOs



# Minimizing Liability: Actions in Emergencies

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- Medical care during public health emergency events will be provided to the best extent capable.....but

**ERRORS WILL OCCUR**

**MALPRACTICE WILL BE ALLEGED**

- Both state and federal laws recognize importance of providing protection from liability for those acting in good faith during emergencies



# Minimizing Liability: Volunteer Protection Act of 1977

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- Federal law preempts state laws
- No liability for volunteer of any non-governmental organization or government if:
  - Work performed within volunteer's scope of duties
  - Volunteer is properly licensed
  - Volunteer had no criminal or willful misconduct
- The Non-Government Organization (NGO) or government remains liable for acts of volunteers



# Minimizing Liability Example: State Good Samaritan Laws – Kansas

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- KSA 65-2891:
- A health care provider, who in good faith, renders assistance at the scene of an emergency or accident shall not be liable for any civil damages other than for gross negligence, or willful/wanton acts or omissions



# Minimizing Liability: Using Federal Employees

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- Legal risks to state officials limited when using federal employees:
  - Federal government responsible for training, credentialing, licensing
  - Federal government handles payroll, payroll taxes
  - Federal Workman's Compensation provision applies for injuries to personnel
  - Federal liability protections under Federal Tort Claims Act



# Minimizing Liability:

## EMAC Licensing & Liability Issues

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- Licensing of professionals
  - *If a “person” is licensed in responding state, the person “shall be deemed” licensed in requesting state*
  - *Unless requesting governor orders otherwise*
- Liability/compensation provisions
  - *“Officers and employees” of responding state are “agents” of requesting state*
  - *Responding state and its “officers and employees” not liable for actions in good faith*
  - *Compensation and death benefits for “members of emergency forces” of a state are paid by the employing state – whether responding or requesting*



# Addressing Limitations: Voluntary NGOs

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- Some paid staff work for volunteer-based NGOs
- Paid NGO personnel may not be covered by same Good Samaritan protection applicable to persons who serve for no fee



# Key Takeaways - Summary

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- Legal, logistical and management issues are paramount in staffing for disaster response
- Preparation is key – Consult qualified attorney in advance of the next emergency



# *Hypothetical Example (Cont.)*

## *What Can Go Wrong Now . . .*

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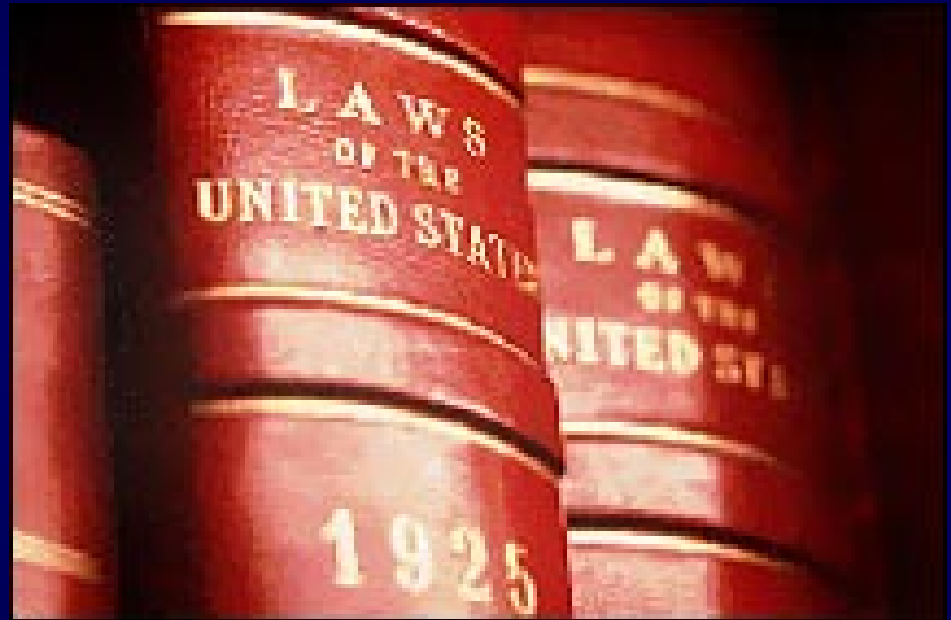
- Response is moving along into recovery, but...
- Miscommunication is leading to injuries and lawsuits
- After several weeks, several private hospitals report cash flow crisis, refuse patients
- Audit of municipal hospitals disallows reimbursement of cost of treating patients



# End: Unit 5

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



[www.cdc.gov/phlp](http://www.cdc.gov/phlp)

