

Public Health Emergency Law

A Foundational Course for Emergency Response Practitioners

Legal Issues: Detecting and Declaring Emergencies

*Based on the Course Developed by the
U.S. Centers for Disease Control and Prevention*

Disclaimer

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Objectives

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

1. Understand the legal and privacy issues associated with the collection and disclosure of personally identifiable health information during a public health emergency
2. Understand the significance of emergency “declarations” to public health officials and emergency managers
3. Understand the powers, assistance and resources triggered by state and federal emergency declarations

Objective 1

Understand the legal and privacy issues associated with the collection and disclosure of personally identifiable health information during a public health emergency

PH Emergency Scenarios

- Suspicious substances: Law enforcement commences/controls investigation from inception
- Human samples:
 - PH commences investigation
 - PH alerts law enforcement and requests CDC assistance
 - Law enforcement then controls investigation
- Incident Command Center may be activated and other agencies involved as necessary

Legal and Privacy Issues

- What are the legal authorities for disclosures under state and federal law?
- What are the confidentiality requirements when personally identifiable health information (PHI) has been disclosed?

Disclosures of PHI

- Disclosures of PHI by providers:
 - to DPH
 - to law enforcement authorities
- Disclosures of PHI by DPH and local health:
 - to other health authorities (*e.g.*, CDC)
 - to law enforcement authorities

Key Provisions

- State law:
 - Section 19a-215 of the CGS
 - Section 19a-25 of the CGS
 - Section 19a-2(a)(8) of the CGS
- Federal law
 - HIPAA
- State and Federal FOIA
- Federal Privacy Act
- Classified Information

Section 19a-215 of the CGS

- Provides authority for:
 - Providers to disclose PHI to DPH and local health
 - DPH and local health to conduct public health investigations and collect additional PHI
 - DPH to maintain the confidentiality of PHI disclosed by providers, pursuant to sec. 19a-25

Disclosures by Providers to PH Authorities – State law

Section 19a-215(b) provides: “Each health care provider shall report in writing or by telephone each case occurring in his practice, of any disease on the commissioner’s list of reportable diseases and laboratory findings to the director of health of the town, city or borough in which such case resides and to the Department Such reports of disease shall be confidential and not open to public inspection except as provided in subsection (d) of this section.”

Disclosures by Providers to PH Authorities – State law (cont.)

- Commissioner's list of reportable diseases includes Category 1 diseases which are possible indicators of bioterrorism (e.g., anthrax, botulism, brucellosis, plague, smallpox, *etc.*)
 - reportable immediately by telephone on day of recognition/strong suspicion to DPH and local health; written report mailed within twelve hours
 - Must be reported by providers, laboratories, day care centers, camps, etc.

Authority of DPH/Local Health to Conduct Further Investigation

Section 19a-215(c) further provides:

“When a local director of health or his authorized agent or DPH receives a report of a disease or laboratory finding on the Commissioner’s list of reportable disease . . . , either may contact . . . the reporting . . . provider and . . . the person with the . . . finding to obtain such information . . . necessary to lead to the effective control or further spread of such disease. . . this information may include obtaining the identification of persons who may be the source or subsequent contacts of such infection.”

Confidentiality

Sec. 19a-215(d) provides:

“All personal information obtained from disease prevention and control investigations as performed in subsection (c) of this section including the health care provider’s name and the identity of the reported case of disease and suspected source persons and contacts shall not be divulged to anyone and shall be held strictly confidential pursuant to section 19a-25, by the local director of health and his authorized agent and by the Department of Public Health.”

Authority under Section 19a-25

Section 19a-25 authorizes the Department and local health to:

- Keep PHI confidential
- Use PHI to conduct medical or scientific research
- Use and disclose PHI, as necessary (including to law enforcement officials), for disease prevention and control

Disclosures to DPH during PH Investigation

Section 19a-25 of the CGS provides:

“All information . . . procured by the directors of health . . . or DPH pursuant to section 19a-215 . . . shall be confidential and shall be used solely for the purposes of medical or scientific research and . . . disease prevention and control by the local director of health and the Department of Public Health”

PH's Confidentiality and Disclosure Requirements

Section 19a-2a(8) of CGS authorizes the Commissioner of DPH “with the health authorities of this and other states, [to] secure information and data concerning the prevention and control of epidemics and conditions affecting or endangering the public health, and compile such information and statistics and disseminate among health authorities and the people of the state such information as may be of value to them.”

Disclosures by Providers to PH Authorities – Federal law - HIPAA

- Before information gets to public health authority, it is usually held by health care providers subject to HIPAA
- HIPAA applies to “covered entities” which include: health care providers, plans and “clearinghouses”
- HIPAA regulates the use and disclosure of PHI by covered entities

Disclosure by Providers to PH Authorities – HIPAA

- HIPAA generally *prohibits the disclosure of PHI* by a “covered entity” *except*:
 - For treatment, payment and health care operations (TPO)
 - When specific authorization is provided
 - When the information is de-identified
 - When there is a HIPAA exception

Disclosures by Providers to PH Authorities – HIPAA

- HIPAA permits disclosure of PHI to “health oversight agencies” such as DPH and local health:
 - **As required by law** (42 CFR 164.512(a))
 - For “**public health activities**” (42 CFR 164.512(b)), *e.g.*, prevent/control disease by reporting diseases, conducting PH surveillance, investigations, *etc.*
 - For “**public health oversight activities** (42 CFR 164.512(d), *e.g.*, activities necessary for oversight of health care system, compliance with program standards, *etc.*

Disclosure by Providers to PH Authorities – HIPAA

- Providers may report PHI to DPH/Local Health under section 19a-215 of CGS under all three exceptions.
- “Minimum necessary” applies to disclosures made for
 - Public health activities
 - Public health oversight activities
- “Minimum necessary” does not apply to disclosures “as required by law”

Disclosure by Providers to Law Enforcement Authorities –HIPAA

- Pursuant to court order, subpoena or administrative request. 42 CFR 164.512(f)(1)
- 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
 - No information re DNA, dental records, or samples/analysis of body fluids or tissue.42 CFR 164.512(f)(2)

Disclosure by Providers to Law Enforcement Authorities – HIPAA

- 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. 42 CFR 164.512(f)(3)

Disclosure by Providers to Law Enforcement Authorities – HIPAA

- Provider providing emergency medical care (other than on provider's premises):
 - May disclose PHI as necessary to alert law enforcement to commission, nature, and location of a crime and victims; and, identity, description and location of perpetrator of a crime (unless the care relates to abuse, neglect, or domestic violence which may only be disclosed as set forth in 45 CFR 164.512(c)). 45 CFR 164.512(f)(6)(I)
 - Note: This is specific to a report initiated by a health care provider to law enforcement.

Other HIPAA Exemptions

Authorizing Providers to Disclose PHI

- To prevent or lessen a serious and imminent threat to the health and safety of the individual or the public when the disclosure is to a person or persons reasonably able to prevent or lessen the threat. 42 CFR 164.512(j)
- To a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition if the provider is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation. 42 CFR 164.512(b)(1)(iv).

Other HIPAA Exemptions

Authorizing Providers to Disclose PHI

- To a public or private entity authorized by law or charter to assist in disaster relief efforts, to coordinate with and assist such entities in:
 - Notifying a family member, personal representative, or other person responsible for an individual's care, of an individual's location, general condition, or death
 - If possible, provide opportunity to agree/object; if not possible, provider uses professional judgment in individual's best interest and discloses only what is directly relevant. 42 CFR 164.510(b)(4)

Other HIPAA Exemptions Authorizing Providers to Disclose PHI

- To coroners and medical examiners for:
 - Determining the cause of death
 - Identifying the deceased person
 - For other duties authorized by law
42 CFR 164.512(g)

HIPAA “Accounting” Requirement

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*

CT Freedom of Information Act (FOIA)

- CT FOIA Law (Section 1-200 *et seq.*):
 - Generally requires disclosure of all records kept on file by any public agency, but also states that “Nothing in the FOIA shall be construed to require disclosure of” certain categories of documents, *e.g.*, personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy. Sec. 1-210(b)(2).

Federal FOIA and Federal Privacy Act: Differences

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

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

Conclusion

- Providers are generally required to maintain the confidentiality of PHI, but are also required by state law and permitted by HIPAA to disclose PHI to public health authorities; HIPAA permits providers to disclose PHI to law enforcement under circumstances as described in HIPAA.
- PH authorities are authorized to conduct public health investigations and required to maintain strict confidentiality of PHI; however, such authorities may disclose PHI to law enforcement to prevent and control the spread of disease.

Objective 2

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

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 “activate” emergency authorities
 - Required to make costs eligible for reimbursement

General Authorities Available Without “Emergency” Declaration

- Public health officials at the local, state and federal levels, generally can exercise some or all of these principal health authorities to control communicable disease without “declaring” public health emergency, including:
 - Quarantine/isolation (Conn. Gen. Stat. 19a-221)
 - Travel restrictions
 - Contact tracing
 - Inoculations/medical examinations
- Also, court enforcement of legal orders of local public health authority (Conn. Gen. Stat. 19a-220)

Local Action Without Declaration

Connecticut example:

19a-221(a): Any town, city, borough or district director of health may order any person isolated or quarantined whom such director has reasonable grounds to believe to be infected with a communicable disease or to be contaminated, if such director determines such person poses a substantial threat to the public health and isolation or quarantine is necessary to protect or preserve the public health...

State of Connecticut

Local Health Departments and Districts, July 2006

Health Districts^{1,2}

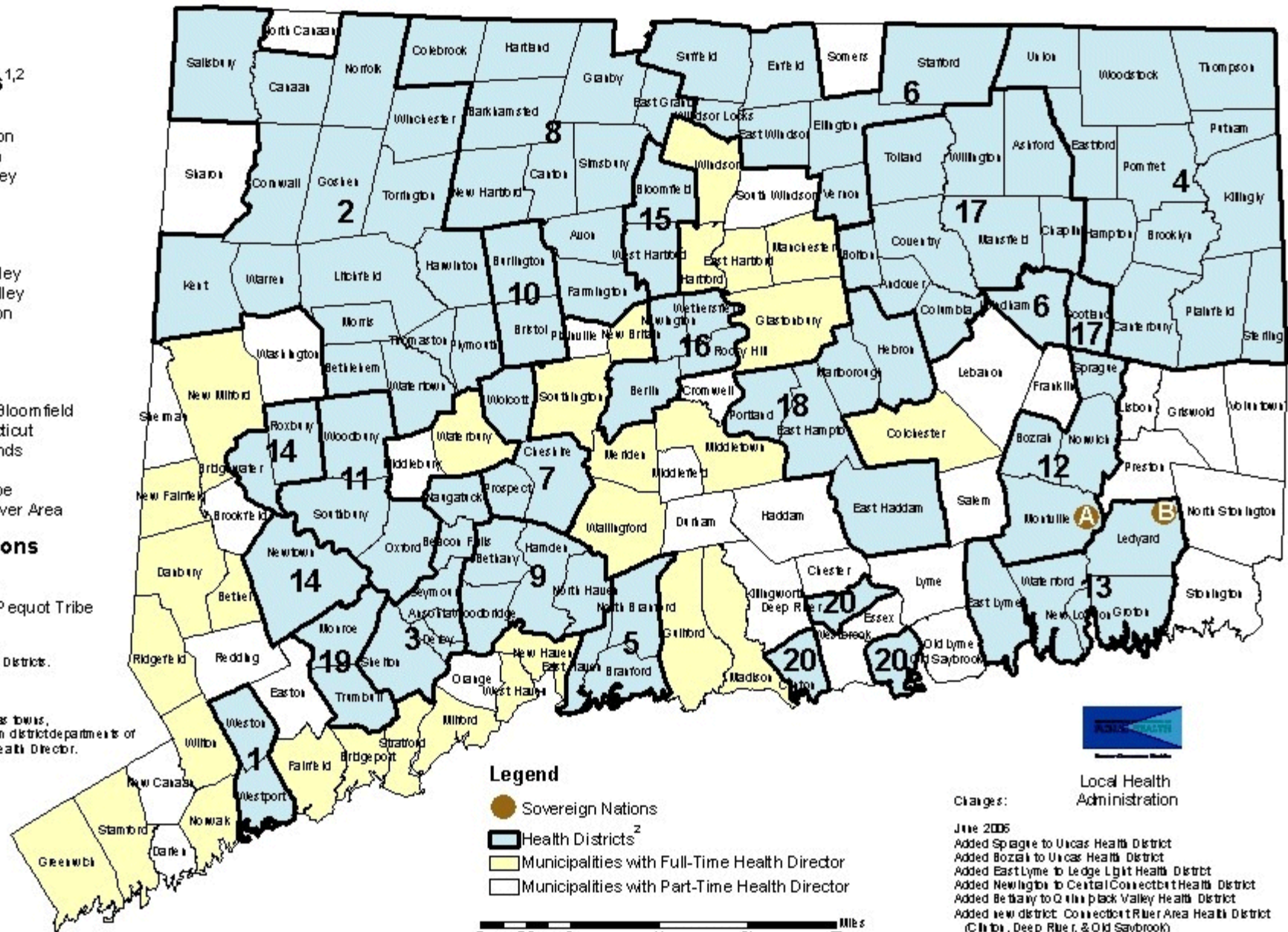
- 1 Westport-Weston
- 2 Torrington Area
- 3 Naugatuck Valley
- 4 Northeast
- 5 East Shore
- 6 North Central
- 7 Cheshire
- 8 Farmington Valley
- 9 Quinnipiac Valley
- 10 Bristol-Burlington
- 11 Pomperaug
- 12 Uncas
- 13 Ledge Light
- 14 Newtown
- 15 West Hartford-Bloomfield
- 16 Central Connecticut
- 17 Eastern Highlands
- 18 Chatham
- 19 Trumbull-Monroe
- 20 Connecticut River Area

Sovereign Nations

- A Mohegan Tribe
- B Mashantucket Pequot Tribe

¹Numbers are assigned by date of formation of Health District.

²Health Districts are defined as towns, cities, or boroughs called to form district departments of health and have a full-time Health Director.



June 21, 2006



Local Health Administration

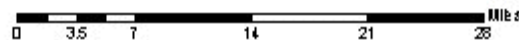
Changes:

June 2006

- Added Sprague to Uncas Health District
- Added Bozrah to Uncas Health District
- Added East Lyme to Ledge Light Health District
- Added Newington to Central Connecticut Health District
- Added Bethany to Quinnipiac Valley Health District
- Added new district: Connecticut River Area Health District (Cheshire, Deep River, & Old Saybrook)

Legend

- Sovereign Nations
- Health Districts²
- Municipalities with Full-Time Health Director
- Municipalities with Part-Time Health Director



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 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: CT does not have county government, so declarations are either at the local, state or federal level
- Type of event:
 - Any threat to life, health, safety, property
 - Specific threat: “serious disaster”, enemy attack, public health

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

Principal Declarations for Public Health Emergencies

- Declarations provide particular powers to particular governments/officials
- Multiple declarations are common
 - State level:
 - State of Emergency (Title 28) and
 - Public Health Emergency (PHERA -- 19a-131)
 - Federal level:
 - Public Health Emergency and
 - Stafford Act Emergency or Major Disaster

Governor's Declaration of State of Emergency Title 28

- The Governor can declare a state of emergency in the event of a “serious disaster”
- Activate emergency plans and authorize deployment and use of “civil preparedness forces”
- Allows suspending any statute, regulation or requirement whenever in her opinion it is in conflict with the efficient and expeditious execution of civil preparedness functions
- Trigger special powers
 - To control persons and property
 - To seek mutual aid from other states (EMAC)

Public Health Emergencies: State

State law determines:

- Impact of declaration: What powers are conveyed?
- Who can declare — CT rules **under PHERA**:
 - Governor has authority to declare a public health emergency
 - In a declared public health emergency, CT Commissioner of Health has authority to confine people, but may delegate this authority to any local health director or Dept. of Public Health employee.
- Procedure/information required for declaration

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

Using National Response Plan

- In major events, coordination of federal response may be organized in accordance with National Response Plan
 - Where state and local capabilities need additional federal support
 - State and federal government join forces in the Joint Field Office (JFO)
 - Resources available under powers of ANY federal agency are coordinated through the JFO and the use of Emergency Support Functions (ESFs)

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 Resources

- Both major disaster and emergency declarations authorize some of the same emergency measures
- Emergency powers – President may direct any Federal agency to provide resources and assistance, including:
 - 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

Additional “Major Disaster” Resources

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.

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:
 - 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

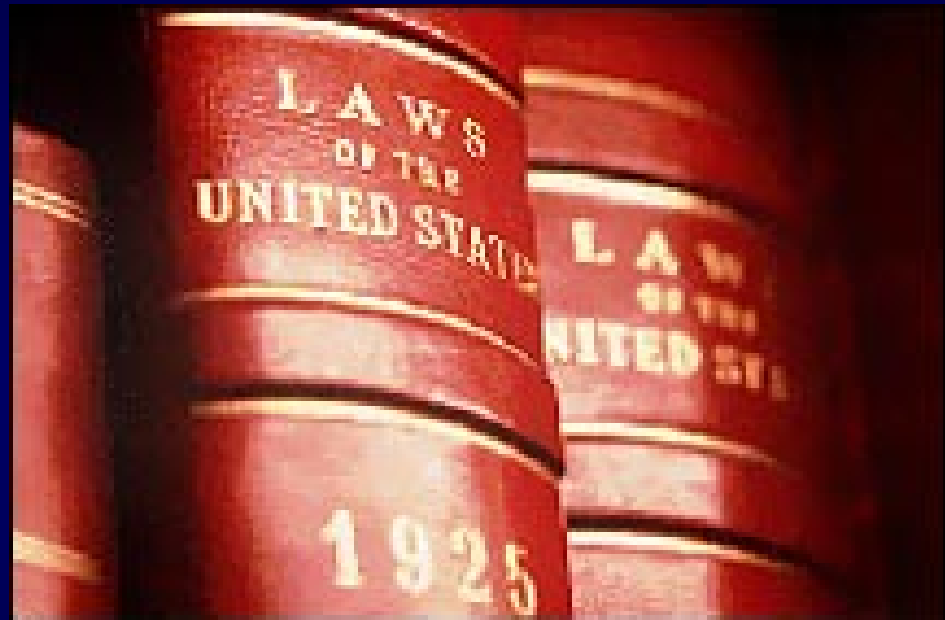
- Law clearly authorizes health providers to provide individual medical information to public health officials, and authorizes sharing of that information within guidelines.
- Although some powers and assistance are available without formal declaration, vast resources can be mobilized upon the declaration of an emergency.

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