Public Health Legal Preparedness
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Presentation Overview

- CDC’s Public Health Law Program
- Defining Public Health Legal Preparedness
- State Legal Authorities: A Case Study
Disclaimer

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CDC’s Public Health Law Program

Mission and Services
CDC’s Public Health Law Program

• **What we do**
  - Advance the use of law as a public health tool

• **How we do it**
  - Provide technical assistance, publications, legal epidemiology, and workforce development
  - We focus on creating tools – something that can be used to influence public health outcomes

• **Who we serve**
  - CDC programs and state, tribal, local, and territorial (STLT) communities
CDC’s Public Health Law Program

To submit technical assistance request or learn more about public health law, visit us at
www.cdc.gov/phlp
What Is Public Health Legal Preparedness?
Public Health Preparedness Requires Public Health Legal Preparedness

- Key components of public health preparedness
  - A professional workforce competent in essential skills
  - Public health agencies that meet defined preparedness performance standards
  - Collaborative networks of agencies and partners
  - Modern information systems and laboratories
  - Agencies and partners who are legally prepared
Public Health Legal Preparedness Defined . . .

“Public health legal preparedness is a subset of public health preparedness” and is the “attainment by a public health system . . . of legal benchmarks essential to the preparedness of the public health system.”

1. **LAWS**: Legal authorities based in science and on contemporary principles of jurisprudence

2. **COMPETENCIES**: Professionals who know their operating legal framework and how to apply law to public health goals

3. **COORDINATION**: In implementing law-based action across jurisdictions and sectors

4. **INFORMATION**: On public health law best practices
Laws and Legal Authorities
What Are the Major Sources of Public Health Authority?
Constitutional Framework for Emergency Authorities

• The Constitution granted enumerated powers to the federal government
  • Interstate commerce
  • National defense
  • Power to tax and spend for public welfare

• Powers not enumerated were “reserved” to states
  • Police powers: includes public health control powers

• States may in turn delegate powers to localities
  • Home Rule states vs. Non-Home Rule (Dillon’s Rule)
  • Note preemption: federal or state law invalidates or overrules state or local law
The Federal System and Local Control

All emergencies start locally

• As scale and complexity increase, local governments request support from the state
• When situation is beyond capability of the state, the governor may request aid from the President
• Catastrophic response triggers resources from
  • Multiple jurisdictions and agencies
  • Multiple levels of government
• Unified command replaces local command

Result: A textbook example of federalism
State and Local Legal Control Powers

Remember the lessons of federalism:
The primary “police power” function, including public health control power, is reserved to the states under the US Constitution’s 10th Amendment, and the states may delegate this power to localities.
Jacobson v. Massachusetts
US Supreme Court (1905)

- Principal case on constitutionality of mandatory public health control measures
  - 1902 smallpox outbreak in Cambridge, MA
  - Defendant Jacobson convicted for refusal to be vaccinated ($5 fine)
  - Court stated that police power embraces “reasonable regulations” to protect public health and safety
  - “Upon principle of self defense, community has a right to protect itself against an epidemic disease”
Mandatory Controls & Social Distancing: Balancing the Public’s Health with Individual Liberty Interests

Collective actions for the common good

Public good

Individual liberties
Legal Issues in a Public Health Emergency: A Case Study
• A case appears in a hospital emergency department (ED)
  – A 30-year-old man presents with fever and pustules
  – He has waited in ED for a few hours before being seen by a physician
  – Patients and staff in ED have come and gone in the interval
  – When seen, the physician suspects smallpox
Legal Issues in a Public Health Emergency

8 Practical Questions
Legal Issues in a Public Health Emergency

From the perspective of a state or local public health practitioner:

1. Can we declare a public health emergency?
2. Can we investigate contacts?
3. Can we examine and test people?
4. Can we treat and vaccinate?
5. Can we isolate and quarantine?
6. Can we use non-governmental personnel?
7. Are we liable?
8. Can we obtain facilities and supplies?
The Unfolding Story . . .

- A case appears in a hospital emergency department
- Public health officials are notified
  - They close the ED, telling those present that they may not leave
  - Preliminary confirmation of the diagnosis of smallpox is made by the other ED physicians
  - The media pick up the story of a local case of smallpox and widely report it
  - The public begins to show signs of panic, and the local health resources are stressed
Legal Issues in a Public Health Emergency

♢ Can he or she declare an emergency?

State law (Kansas)

*KAN. STAT. ANN. § 48-924(b)(1).* Disasters; responsibilities of governor; state of disaster emergency

The governor, upon finding that a disaster has occurred or **that occurrence or the threat thereof is imminent**, shall issue a **proclamation declaring a state of disaster emergency**.
Legal Issues in a Public Health Emergency

♦ Can he or she declare an emergency? Depends

State law (Kansas)

*KAN. STAT. ANN. § 48-904. Definitions*

(d) “disaster” means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or manmade cause, including, but not limited to, fire, flood, earthquake, wind, storm, epidemics, contagious or infectious disease, air contamination, blight, . . . terrorism or hostile military or paramilitary action
The Unfolding Story . . .

• A case appears in a hospital ED
• Public health officials are notified
• Laboratory tests confirm the diagnosis of smallpox for the first patient. More patients begin to appear in EDs, throughout the city, with signs of smallpox
  — Public health personnel want to learn the identities of the persons with whom the cases had contact
  — Public health personnel want to examine those persons
The Unfolding Story . . .

- A case appears in a hospital ED
- Public health officials are notified

- Given the nature of smallpox, health officials urge the governor to declare an emergency
  - Anxiety among the public increases
  - People begin to demand more information
    Some demand vaccines
Legal Issues in a Public Health Emergency

- Should he or she declare an emergency?  

State law (Kansas)  

Yes

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Can we investigate the contacts? Yes

State law (Kansas)

*KAN. STAT. ANN. § 65-101. Health supervision; investigation of causes of disease, sickness, and death; prevention of spread of disease*

The secretary of health and environment shall . . .

(a)(2) **investigate the causes of disease**, including especially, epidemics and endemics, the causes of mortality and effects of locality, employments, conditions, food, water supply, habits, and other circumstances affecting the health of the people of the state and the causes of sickness and death

(a)(5) **take action to prevent the introduction . . . and spread** of infectious or contagious disease within the state
Can we examine and test people?  

Yes

State law (Kansas)

*KAN. STAT. ANN. § 65-128. Rules and regulations of secretary to prevent spread and dissemination of diseases;*

(b) The secretary of health and environment is authorized to issue such orders and adopt rules and regulations as may be medically necessary and reasonable to prevent the spread and dissemination of diseases injurious to the public health, including but not limited to, providing for the testing for such diseases[.]
Can we examine and test people? Yes

State law (Kansas)

*KAN. STAT. ANN. § 65-129b. Infections or contagious diseases; authority of local health officer or secretary; evaluation or treatment orders*

The local health officer or the secretary:
(1)(A) May issue an order requiring an individual who the local health officer or the secretary has reason to believe has been exposed to an infectious or contagious disease to seek appropriate and necessary evaluation[.]
The Unfolding Story...

- A case appears in a hospital ED
- Public health officials are notified
- Health officials urge the governor to declare emergency
- Laboratory tests confirm; more patients appear
- There are now 10 confirmed cases in the city and another 5 cases in other areas of the state
  - More people are demanding vaccination
  - Some people who appear to be ill are refusing treatment
  - Some people who are believed to have been exposed to smallpox are refusing vaccination
Can we treat or vaccinate people? Yes

State law (Kansas)

*KAN. STAT. ANN. § 65-129b. Infections or contagious diseases; authority of local health officer or secretary; evaluation or treatment orders*

The local health officer or the secretary:

(1)(A) May issue an order requiring an individual who the local health officer or the secretary has reason to believe has been exposed to an infectious or contagious disease to seek appropriate and necessary evaluation and treatment[.]
Legal Issues in a Public Health Emergency

♦ Can we treat or vaccinate people? Yes

State law (Kansas)

*KAN. STAT. ANN. § 65-128. Rules and regulations of secretary to prevent spread and dissemination of diseases, testing, and quarantine*

(b) The secretary of health and environment is authorized to issue such orders and adopt such rules and regulations as may be *medically necessary and reasonable* to prevent the spread and dissemination of diseases injurious to the public health[.]
Can we treat or vaccinate people?  Yes

State law (Kansas)

*KAN. STAT. ANN. § 65-129b. Infections or contagious diseases; authority of local health officer or secretary; evaluation or treatment orders*

(1)(C) If a competent individual of 18 years of age or older . . . *refuses vaccination*, medical examination, *treatment* or testing . . . [The local health officer or the secretary] may require the individual to go to and remain in a place of *isolation or quarantine* until the local health officer or secretary determines that the individual no longer poses a substantial risk of transmitting the disease to the public.
Modern Context: Mandatory Treatment Powers

Remember:
Laws mandating treatment of individuals may be *on the books*

**BUT**
Modern societal views regarding individual liberty rights make public health officials hesitant to enlist the use of force to treat people against their will.
The Unfolding Story . . .

• A case appears in a hospital ED
• Health officials are notified and urge governor to declare emergency
• Laboratory tests confirm; more patients appear
• 10 confirmed cases in city; 5 in other areas

• Public health officials recommend the use of isolation and quarantine
  – Some object to being isolated or quarantined
  – Family members do not want to be separated
  – People fear that their needs will not be met in isolation or quarantine
Legal Issues in a Public Health Emergency

- Can we isolate or quarantine people? Yes

State law (Kansas)

*Kan. Stat. Ann. § 65-129b. Infections or contagious diseases; authority of local health officer or secretary; evaluation or treatment orders, isolation or quarantine orders*

(1)(B) When the local health officer or the secretary determines that it is medically necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease, may order an individual or group of individuals to go to and remain in places of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public.
Legal Issues in a Public Health Emergency

- Can we isolate or quarantine people? **Yes**

State law (Kansas)

*KAN. STAT. ANN. § 65-119. Duties and powers of local health officers; contagious diseases*

(a) Any county or joint board of health or local health officer having knowledge of any infectious or contagious disease. . . shall immediately exercise and maintain supervision over such case or cases during their continuance, seeing that all such cases are properly cared for and that the provisions of this act as to isolation, restriction of communication, quarantine, and disinfection are duly enforced.
Can we isolate or quarantine people? Yes

State law (Kansas)

*KAN. STAT. ANN. § 65-126. Quarantine of city, township, or county*

(a) Whenever a county or joint board of health officer neglects to properly isolate and quarantine infectious or contagious diseases and persons afflicted with or exposed to such diseases . . . the secretary of health and environment may quarantine any area in which any of these diseases may show a tendency to become epidemic.
Can we isolate or quarantine people? Yes

State law (Kansas)

*KAN. STAT. ANN. § 48-925. Powers of governor during a state of disaster emergency; orders and proclamations*

(a)(7) During a state of disaster emergency, . . . the governor may control ingress and egress of persons and animals to and from a disaster area, the movement of persons and animals within the area and the occupancy by persons and animals of premises therein . . .
Legal Issues in a Public Health Emergency

♦ Can we isolate or quarantine people? **Yes**

State law (Kansas)

*KAN. STAT. ANN. § 65-128. Rules and regulations of secretary to prevent spread and dissemination of diseases, testing, and quarantine*

(b) The secretary of health and environment is authorized to issue such orders and adopt such rules and regulations as may be **medically necessary and reasonable** to prevent the spread and dissemination of diseases injurious to the public health, including, but not limited to, providing for the testing, for such diseases, and the **isolation and quarantine** of persons afflicted with or exposed to such diseases.
Critical Implementation Issues

The government has legal authority to require quarantine and isolation

BUT

Public health officials must still determine

• How to apply these powers fairly?
• Who will enforce?
• How much force will be used to achieve compliance?
The Unfolding Story . . .

- A case appears in a hospital ED
- Public health officials are notified
- Health officials urge the governor to declare emergency
- Laboratory tests confirm; more patients appear
- 10 confirmed cases in city; 5 in other areas
- Isolation and quarantine recommended by public health
- Healthcare personnel become scarce
Can we use non-governmental personnel?

State law (Kansas)  

Yes

KAN. STAT. ANN. § 48-916. Authority to accept services, gifts, grants and loans

(b) Whenever any person, firm or corporation offers to the state or to any political subdivision thereof, services, . . . . by way of gift, grant or loan, for purpose of emergency management, the state, acting through the governor, or such political subdivision, acting through its executive officer or governing body, may accept such offer[.]
Can we use non-governmental personnel?

Yes

State law (Kansas)

*KAN. STAT. ANN. § 48-928. Duties of division of emergency management*

In addition to other duties imposed under this act, the division of emergency management shall:

(g) plan and make arrangements for the availability and use of any private facilities, services and property for emergency management activities and, if necessary and if in fact used, provide for payment for such use under terms and conditions agreed upon;

(h) establish a register of persons with types of training and skills important in emergency management activities;
Can we use out-of-state personnel? Yes

State law (Kansas)

*KAN. STAT. ANN. § 48-9a01. Interstate Emergency Management Assistance Compact*

It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of responsibilities . . . The party states shall:

(A)(6) inventory and set procedures for the **interstate loan and delivery of human and material resources**, together with procedures for reimbursement or forgiveness
The Unfolding Story . . .

- A case appears in a hospital ED
- Public health officials are notified
- Health officials urge the governor to declare emergency
- Laboratory tests confirm; more patients appear
- 10 confirmed cases in city; 5 in other areas
- Isolation and quarantine recommended by public health
- Healthcare personnel become scarce
- Workers and volunteers worry about liability
Legal Issues in a Public Health Emergency

Are we liable?  No

State law (Kansas)


(a) **Neither the state or any political subdivision** of the state, nor the agents or representatives of the state or any political subdivision thereof, **shall be liable for personal injury or property damage sustained** by any person appointed or acting as a volunteer worker, or member of any agency, engaged in emergency management activities.

(c) Any member of a **regional medical emergency response team** created under K.S.A. § 48-928, and amendments thereto, shall be deemed a **state employee under the Kansas tort claims act**, K.S.A. § 75-6101, *et seq.*
Legal Issues in a Public Health Emergency

♦ Are we liable?  No

State law (Kansas)

*KAN. STAT. ANN. § 48-9a01. Interstate Emergency Management Assistance Compact*

Article VI Liability

Officers or employees of a party state rendering aid in another state pursuant to this compact *shall be considered agents of the requesting state for tort liability and immunity purposes*. No party state or its officers or employees rendering aid in another state pursuant to this compact *shall be liable* on account of any act or omission in good faith on the part of such forces while so engaged . . . .
The Unfolding Story . . .

• A case appears in a hospital ED
• Public health officials are notified
• Health officials urge the governor to declare emergency
• Laboratory tests confirm; more patients appear
• 10 confirmed cases in city; 5 in other areas
• Isolation and quarantine recommended by public health
• Healthcare personnel become scarce
• Workers and volunteers worry about liability
• Facilities and supplies become scarce
Legal Issues in a Public Health Emergency

♦ Can we obtain facilities and supplies?  Yes

State law (Kansas)

*KAN. STAT. ANN. § 48-916. Authority to accept services, gifts, grants and loans*

(b) Whenever any person, firm or corporation offers to the state or to any political subdivision thereof, services, **equipment, supplies, materials or funds** by way of gift, grant or loan, **for purpose of emergency management**, the state . . . may accept such offer . . . and upon such acceptance the governor of the state or executive officer or governing body of such political subdivision may authorize any officer of the state or of the political subdivision . . . to receive such services, equipment, supplies, materials or funds on behalf of the state or such political subdivision, subject to the terms of the offer.
The “first tool of public health” is epidemiology . . . “The second public health tool might well be the law.”

For more information on PHLP visit

http://www.cdc.gov/phlp

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