Improving Cross-sectoral and Cross-jurisdictional Coordination for Public Health Emergency Legal Preparedness


Introduction
This paper is one of the four interrelated action agenda papers resulting from the National Summit on Public Health Legal Preparedness (Summit) convened in June 2007 by the Centers for Disease Control and Prevention (CDC) and multi-disciplinary partners. Each of the action agenda papers deals with one of the four core elements of public health legal preparedness: laws and legal authorities; competency in using those laws; coordination of law-based public health actions; and information. Options presented in this paper are for consideration by policy makers and practitioners – in all jurisdictions and all relevant sectors and disciplines – with responsibilities for all-hazards emergency preparedness.

Advancing and protecting the public’s health depends upon the coordination of actions by many, diverse partners. For effective public health preparedness, there must be effective coordination of legal tools and law-based strategies across local, state, tribal, and federal jurisdictions, and also across sectors such as public health, health care, emergency management, education, law enforcement, community design, and academia.

Needs for Strengthening Coordination of Law-Based Responses
Recent catastrophic events and other public health emergencies – such as the terrorism attacks of late 2001 and the hurricane disasters of 2005 – have yielded many lessons for overall emergency preparedness, including exposing issues and gaps in legal preparedness for emergencies. Particularly important are issues concerning coordinating the application of legal authorities across sectors and jurisdictions including, but not limited to, public health and private health care providers, tribes and tribal authorities, the judiciary and court system, the military, and federal, state, and local governments. Other gaps in legal preparedness that have been identified concern the use of mutual aid agreements for preparedness and response, and directing and enforcing social distancing measures to control transmission of influenza or other serious communicable diseases.

Summit deliberations focused particularly on challenges and options for improving coordinated applications of law-based interventions across sectors and jurisdictions during emergencies. A set of fundamen-
tal principles emerged from the discussions at the Summit. These include the need for:

- A legal framework appropriate to support continuity, stability, and efficiency in response efforts;
- Transparent and streamlined communications in support of applications of the law to coordinated responses;
- Trust and credibility among legal support partners and emergency responders;
- Robust and dynamic partnerships among responders and organizations involved in the application of law-based interventions; and
- Legal tools to ensure consistent responses across multiple sectors and jurisdictions.

**Options for Improving Coordination and Public Health Legal Preparedness**

This section presents selected options that policy makers and practitioners – in all jurisdictions and in all the relevant sectors and disciplines – may consider taking toward the goal of full legal preparedness for all-hazards public health emergencies.

As a result of the extensive planning efforts preceding the Summit and workgroup deliberations, the following six topics were highlighted in the development of action agenda options for improving public health legal preparedness for coordination: (1) public health and healthcare providers; (2) tribes and tribal authorities; (3) the judiciary; (4) the military; (5) mutual aid; and (6) coordination in implementing social distancing measures. A series of action agenda options are listed for each of these topics. The principles and imperatives for action may also be relevant or adaptable to needs for strengthening law-based coordination involving other sectors that were not an explicit part of the Summit discussions.

1) **Coordinating Public Health with Healthcare Providers**

The challenges of coordination in legal preparedness between public health and health care providers must include a wide range of issues, tasks, and methods. In particular, Summit participants identified options that recognized the distinctions in legal frameworks bearing on public health and health care providers and the implications of public health emergencies for these legal frameworks. As one example, health care providers, whether public or private, may be subject to regulatory issues that do not affect all public agencies, such as state licensure requirements that restrict services offered by health care providers and the number of persons that can be treated. These requirements may complicate or limit response during emergencies when healthcare organizations and individual providers are expected or required to deliver services in off-site, non-medical facilities or other settings. The following options to improve legal preparedness coordination between public health and health care include the review and improvement of response plans, the review of relevant laws and legal frameworks, the development of checklists and other tools, and training.

- Assess the adequacy of health care provider and facility emergency response plans and procedures to ensure they address legal issues including: pharmaceutical dispensing in cases where prescription records cannot be located, or states which will not allow the dispensing of pharmaceuticals by an unlicensed healthcare professional; coordination with public health in decisions to close facilities or evacuate patients during emergencies; the implementation of isolation and quarantine; and emergency credentialing of volunteer health professionals.
- Review and, if indicated, improve the ability of jurisdictions (local, state, tribal) to provide liability protections to health care providers and organizations, including hospitals and health care professionals required by state law to respond, for care delivered during emergencies when they are acting in good faith as part of an emergency response.
- Analyze and clarify the implications that local, state, and federal emergency declarations and public health emergency laws have for health care systems and organizations, hospitals, and individual providers, and disseminate findings to health care provider entities and their legal counsel.
- Assess and improve, as needed, the ability of jurisdictions to waive, suspend, modify, or flexibly apply laws and legal authorities related to health care service delivery, such as health care personnel licensing and regulatory requirements during an emergency, including the waiver of jurisdictional laws related to liability protections of health care-provider volunteers.
- Develop, modify, or implement existing jurisdiction-specific (local, state, tribal) legal preparedness checklists, tools, and educational resources to ensure health care provider preparedness through collaboration between public health and healthcare providers.
- Develop educational and training programs, in conjunction with local, state and national bar associations, academic institutions, and legal counsel for health care providers and public health agencies, that focus on key legal and
operational issues, the roles and responsibilities of their respective clients in a public health emergency, the interventions that may be employed, and considerations of civil liberties, property rights, and other fundamental legal issues.

- Consult with exercise designers to evaluate how best to modify exercises to: (a) ensure that legal issues are considered in the development and conduct of state and local legal preparedness exercises; (b) identify and promote awareness of key legal and operational issues and challenges faced by healthcare providers and facilities in an emergency; and (c) test healthcare provider and facility emergency response plans to ensure effectiveness and integration with other local emergency preparedness efforts.

2) Coordinating Tribal Public Health with Other Entities

Summit planners and participants identified several gaps in coordinating tribal public health with other entities at local, state, and federal levels. The coordination between tribal authorities and other jurisdictions has been constrained for many historical, financial, and political reasons, which have undermined trust and common understanding between the tribal leaders and other jurisdictions. Action recommendations include reviews and improvement of basic public health powers, and the development of mutual aid frameworks and templates.

- Identify and evaluate tribal health and emergency management authorities’ legal preparedness for public health emergencies; compare these authorities to those of surrounding jurisdictions to address and optimize coordination.
- Coordinate with other jurisdictions to strengthen authorities, and, when necessary, enact new laws to facilitate exchange of public health surveillance data.
- Coordinate with other jurisdictions in reviewing and, when necessary, strengthening tribal authorities for implementation of specific law-based interventions such as isolation, quarantine, and closure of public places.
- Identify who has authority to close public and private schools and day care facilities located on tribal lands as a social distancing measure, and develop agreements or protocols for coordinating with tribal public health organizations and neighboring public health agencies. Conduct assessments of tribes’ capacities and develop templates for entering into mutual aid agreements with proximate state and local jurisdictions.

- Consider improving emergency preparedness through coordinated state and tribal agreements, such as Arizona’s Inter Governmental Agreements (IGAs), to address law-based emergency response measures and plans.
- Explore, with the Indian Health Service, options for strengthening of emergency preparedness capacity within service units and in coordination with state public health agencies.

3) Coordinating with the Judiciary

In identifying options for strengthening coordination with and preparedness among the judiciary, Summit planners and participants recognized that public health issues are especially likely to be presented to trial-level systems and courts. Accordingly, it is important that efforts be made both to ensure that such courts would be operational during a public health emergency and also that they would be prepared to address the public health issues likely to be presented during emergencies. Of paramount concern are the education of judges and practitioners, the preparation of continuing operations emergency plans, and the development of best practice standards. However, judges for such courts and court administrators may not possess the technical or personnel resources or capacity to undertake plan preparation, development, and implementation necessary for emergencies. The following options, therefore, especially address these problems.

- Review state and local emergency operation plans to determine if the judiciary is included and modify if necessary.
- Encourage state Supreme Courts and state court administrative offices to develop and update the necessary legal and administrative expertise and effective all-hazards continuity of operations plans, including how legal matters related to the emergency will be handled (for example, the impact of the emergency on child welfare and criminal justice systems, and on civil proceedings).
- Identify, approach, and involve key judges, court administrators, or judicial educators as leaders in efforts to develop public health law resources for courts in jurisdictions where those efforts have not yet begun.
- Condense, organize, and regularly update public health law resource materials to facilitate practical and efficient use by judges during public health emergencies.
- Encourage government and applicable professional organizations to develop and provide the educational and planning resources required for
state and federal trial-level court systems and courts to develop effective plans for emergency response, including:

a. Education conferences with content directed at the unique requirements of judges who will preside over public health-related proceedings, including: (i) applicable public health law; (ii) fundamentals of public health practice; (iii) relevant scientific principles (e.g., infectious diseases principles, concepts underlying non-pharmaceutical interventions); and (iv) benchbooks.

b. Education conferences with content encompassing the needs of public health law practitioners, including attorneys general, municipal solicitors, hospital legal counsel, and human resource attorneys.

c. Development of statewide continuity-of-operations templates which could be adapted to local needs and conditions and which assist judges and court administrators in initiating local planning.

- Include plans for operating outside the courthouse during emergencies and disseminate plans to public health and other government sectors.

- Explore federal and state development of best-practice standards for judicial personnel and others in the legal system likely to interact during public health emergencies (e.g., deputy sheriffs and other corrections officials, and police); standards might address appropriate personal protective equipment, disinfecting procedures, and supplies that should be inventoried.

- Ensure that judicial continuity of operations plans consider and incorporate plans to address the surge of court cases, such as those related to guardianship as well as potential isolation and quarantine cases.

- Provide liability protections to attorneys who provide legal services to clients, whether voluntarily or by court appointment, for representation provided during emergencies when acting in good faith.

4) Coordinating with the Military

As noted in the Summit’s companion status assessment on coordination, federal law and policy generally preclude federal military forces from conducting certain emergency response activities, such as quarantine, evacuation, and law enforcement. The President may authorize exceptions in some circumstances. State military forces (i.e., the National Guard under a Governor’s command) may support emergency response, including law enforcement activities, consistent with that state’s laws.7 State and local jurisdictions and agencies need to understand the roles the military might play in an emergency response, and should review and consider conditions under which coordinated responses to emergencies might involve military forces.8 The following options address this need:

- Review, clarify, and disseminate guidance within individual states regarding legal authorities that govern use of the National Guard in support of emergency response activities.

- Identify legal barriers and opportunities for use of military assets (e.g., military medical assets) in an emergency.

- Disseminate lessons learned from reviews of legal aspects of previous civil-military coordination efforts in response to public health emergencies (e.g., Hurricanes Andrew and Katrina) to public health and other relevant partners.

- Consider options for exercising and testing the feasibility of Department of Defense support of civilian emergency response efforts.

- Explore the development of agreements between public health departments, Department of Veterans Affairs medical centers, and other hospitals for coordinated medical care of patients in meeting communities’ surge care requirements during emergencies.

5) Mutual Aid: EMAC and Key Gaps in Agreements

The Emergency Management Assistant Compact (EMAC) is the principal agreement for facilitating mutual aid among the states. EMAC addresses key issues (i.e., liability, compensation, and reimbursement for expenses) and provides rules for sharing personnel and other resources during an emergency declared by the governor of a state requesting assistance from another jurisdiction.9 However, EMAC provides only a broad, general framework for mutual aid between states, and does not include cross-border mutual aid agreements with the provinces of Canada or the states of Mexico. Summit planners and participants identified several gaps of concern related to the following: planning; information and data sharing; supplemental agreements to EMAC; agreements covering mutual aid during undeclared emergencies; inclusion of tribes; constitutional analysis; and mutual aid across borders and in international contexts; and the authorities of the federal government in international agreements. The following options address these and other gaps.

- Develop, negotiate, and execute agreements formalizing inter- or multi-state cooperative
planning and information-sharing policies and procedures.

- Analyze and modify state and federal privacy laws governing private health information to facilitate entry into multi-jurisdictional agreements to share epidemiologic and laboratory data to detect and control infectious disease outbreaks.
- Analyze differences in state laws and procedures to determine legal gaps in EMAC coverage during declared emergencies, and utilize EMAC authority to enter into supplementary agreements to fill the gaps.
- Assess legal authority to enter into agreements to share information, supplies, equipment, or personnel during smaller scale public health emergencies not covered by EMAC.
- Ensure the inclusion of tribes in mutual aid agreements.
- Conduct further analysis of the “Compact Clause” of the U.S. Constitution, in consultation with State Department attorneys, to fully comprehend the limits imposed on interstate and international mutual aid agreements.
- Assess legal authorities to negotiate and execute cross-border mutual aid agreements between U.S. states, provinces of Canada, and states of Mexico.
- Assess the need to enact laws to address legal liabilities of entities that have entered into mutual aid agreements for use of their facilities during emergencies, or whose facilities might be commandeered for emergency response activities, and to provide immunity to the facility for use for those purposes.

6) Implementing Law-Based Social Distancing Measures: Multi-sector Coordination

An emergency response to a severe contagious disease threat will require timely, decisive, and highly coordinated action based on accurate information and advanced preparedness planning. A key intervention strategy for countering such threats is using social distancing measures, including isolation, quarantine, closure of schools and public places, and cancellation of public events.10 The need for a clear definition of the authority to act is a common thread running through the use and coordination of these measures across multiple disciplines, sectors, and jurisdictions. “Best practices” compel that, prior to the occurrence of a major public health threat, decision trees be developed and law-based models of coordination be implemented in order to fill this gap in legal preparedness. Best practices also mandate the pre-event drafting of relevant legal agreements that encompass coordination of personnel and material resources among different sectors and jurisdictions. One example of this is agreements between public health and law enforcement agencies in some jurisdictions for coordinated investigatory responses to bioterrorism.11 To ensure cross-sectoral and cross jurisdictional coordination of social distancing and other law-based measures, there must be adequate training of and communication to all sectors on legal preparedness. (See Box 1 for examples.)

**Box 1:**

Selected sectors and populations with involvement in coordinated implementation of law based social distancing measures:

- Public health
- Emergency management
- Law enforcement and corrections
- Elected and appointed government officials
- Public and private bar
- Judiciary
- Private sector health care providers
- Educators, school officials, education administrators, education lawyers, and parent-teacher organizations
- Business leaders and managers
- City and county attorneys and local prosecutors
- Transportation agencies
- Racial and ethnic populations
- Faith-based communities and organizations
- Media (radio, television, print)

The following options for legal preparedness in support of social distancing measures emphasize coordination of law enforcement personnel, who may be called upon to assist in implementing social distancing measures and maintaining the peace, and the educational system and schools, which represent a primary locus for the potential interruption of infectious disease transmission.

- Clarify and disseminate information regarding jurisdictional (local, state, tribal) legal authorities concerning coordination among public health, law enforcement, and other public safety agencies in planning for and responding to all-hazards public health emergencies.
- Review and address the sufficiency of laws guiding coordination of public health and law enforcement in implementing social distancing measures and pharmaceutical interventions during declared and undeclared emergencies.
- Examine, clarify, and disseminate information on the status of laws (local, state, tribal) providing legal authority for and guiding coordination
between public health, school, and other officials in closing schools during public health emergencies. Identify who has authority to close public and private schools and day care facilities as a social distancing measure, and develop agreements or protocols for coordinating with public health organizations and neighboring public health agencies.

• Develop and conduct table top exercises to test legal authorities and preparedness for multi-sector coordination in school closures; conduct after-action review, including legal response to issues.12

• Identify the agency or agencies authorized to close or restrict use of public roadways, and to restrict use of public and private transportation conveyances (e.g., airplanes, trains, and buses, cars, limousines, and truck rental agencies), if necessary, as social distancing measures, and develop agreements and protocols for coordination with the public health agency for the use of those authorities.

• Assess legal authorities for gaining access to the broadcast media for dissemination of urgent information about social distancing measures.

Conclusion
Strengthening the public health legal preparedness core element of coordination must account for the involvement of multiple sectors and disciplines at all jurisdictional levels. This paper focuses on those areas that emerged as most important during discussions at the Summit, but recognizes that there are many other sectors for which legal preparedness is important. These other sectors (e.g., business and the insurance industry) have not been seen as traditional public health partners, and, therefore, additional outreach and coordination is needed. In addition, coordination efforts must address human services components, such as services for elderly persons, disabled and displaced populations, the provision of food, and the procurement of energy resources.

An effective approach to further improving multi-sector and jurisdictional legal preparedness comprises several key considerations. First is the need to identify and engage all relevant traditional and newer partner sectors – including, for example, law enforcement and corrections, the judiciary, the military, business leaders, school officials and parent-teacher organizations, emergency management, non-profit organizations, and faith-based organizations. Second, the laws authorizing the response roles for each of these sectors must be reviewed and clarified or revised, if needed; similarly, the potential liabilities for each sector (and corresponding immunity policies) need to be analyzed and addressed. Third is the need to educate each sector regarding its roles and underlying legal authorities and potential liabilities during a coordinated response to a public health emergency. Crucial to the education process is the after-action review of table-top exercises, which must include review of legal issues mediating effective response. Finally, appropriate coordination mechanisms (e.g., preparedness plans, memoranda of understanding, mutual aid agreements) should be developed and tailored to sectors, partners, and anticipated cross-sector involvement in emergency response.

Summit participants concluded that, although there are barriers to coordination in the application of law-based measures during emergency responses, as well as gaps in both authority and implementation, these shortcomings are being, or can be, addressed. To progress further in strengthening this element of public health legal preparedness, however, it will be paramount to add and engage multiple relevant sectors at all levels in planning, reviewing legal authorities, and exercising those authorities necessary for coordinated responses to public health emergencies. Finally, the development of familiarity and trust among sector partners must be a key part of the planning and implementation of coordinated, law-based responses to public health emergencies.

References


