

Key Federal Laws and Policies Regarding Emergency Authority and Immunity

Executive Overview

This document provides a brief overview of key federal laws and policies that govern or affect state emergency preparedness and response activities. This list does not contain all relevant or controlling federal authorities, but highlights items frequently queried by state health agencies regarding emergency authority and immunity issues. Additional information on these authorities is contained in other fact sheets in the *ASTHO Emergency Authority and Immunity Toolkit*. The items below are grouped into “Laws” and “Policies” sections and presented alphabetically within each section.

Laws

Emergency Management Assistance Compact (EMAC)—A congressionally authorized interstate mutual aid compact that provides a mechanism through which states can provide assistance to other states during emergencies. All states have joined EMAC by adopting model language into their state’s statutes. EMAC addresses reimbursement, liability, compensation, and licensure issues.

Federal Employees Compensation Act (FECA)—Provides workers’ compensation to civilian federal employees who are injured or killed during the course of their duties. Volunteers who may deploy in states under federal programs like the National Disaster Medical System or are otherwise deemed to be federal employees are covered under FECA.

Federal Tort Claims Act (FTCA)—Permits lawsuits to be brought against federal government employees in certain circumstances. FTCA allows individuals to seek compensation when they are injured by federal employees acting within the scope of their duties. The act immunizes federal government employees from tort liability (except in certain instances); the federal government assumes an employee’s role as defendant in a lawsuit against the employee. Volunteers of federal agencies deployed by those agencies are entitled to coverage under FTCA.

National Emergencies Act (NEA)—Allows the president to declare a national emergency, which triggers emergency authorities contained in other federal statutes. NEA does not contain any specific emergency authority on its own but relies on the emergency authorities in other statutes, such as the Public Health Service Act. President Obama used the NEA to declare the 2009 H1N1 influenza pandemic a national emergency. A declaration under the NEA (or the Stafford Act) and a Section 318 public health emergency declaration are required before the HHS secretary can exercise Social Security Act Section 1135 waiver authority.

Pandemic and All Hazards Preparedness Act (PAHPA)—Addresses the organization of public health emergency preparedness and response activities and authorizes new programs concerning medical surge capacity, the capacity of states and localities to prepare for and respond to public health emergencies, and the development of countermeasures to biological threats (the Biodefense Advanced Research and Development Authority [BARDA]). Many of the offices and programs within the Department of Health and Human Services (HHS) that state public health preparedness programs interact with on a daily basis were developed or refined through PAHPA, including the Office of the Assistant Secretary for Preparedness and Response, grant programs such as Public Health Emergency Preparedness (PHEP) grants, the Hospital Preparedness Program, and the Healthcare Facility Partnership Program. The act also focuses on the needs of at-risk populations in emergency planning and response.

Public Health Service Act Section 319—Authorizes the HHS secretary to determine that a public health emergency exists, which triggers emergency powers that permit the federal government to assist state and local governments, suspend or modify certain legal requirements, and expend available funds to address public health emergencies. A Section 319 public health emergency declaration is separate and distinct from a presidential declaration under the National Emergencies Act or the Stafford Act. The secretary does not need a presidential declaration to issue a public health emergency declaration under Section 319; however, a presidential declaration is required in addition to a Section 319 declaration if the secretary wants to exercise waiver authority under Social Security Act Section 1135. Other sections of the Public Health Service Act, including Sections 301 and 311, permit the secretary to render assistance to states and localities without declaring a public health emergency.

Public Readiness and Emergency Preparedness Act (PREP Act)—Authorizes the HHS secretary to issue a declaration that provides immunity from tort liability for claims of loss caused by countermeasures against diseases or other threats of public health emergencies. The act covers persons and entities involved in the manufacture, testing, distribution, administration, and use of covered countermeasures. A PREP Act declaration is different from and independent of other federal emergency declarations. A separate emergency declaration under Public Health Service Act Section 319 or another statute is not required for PREP Act immunities take effect.

Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)—Authorizes the delivery of federal emergency technical, financial, logistical, and other assistance to states and localities. A governor must first determine that an event overwhelms the state’s capacity to respond and request a presidential declaration under the Stafford Act before the president can declare all or a portion of a state a “major disaster” or “emergency” area. The Federal Emergency Management Agency (FEMA) coordinates administration of disaster relief resources and assistance to states. The President can declare an emergency without first receiving a gubernatorial request if the emergency involves an area of federal primary responsibility such as a federal building. A Stafford Act declaration can be used to trigger other public health emergency response authorities such as Social Security Act Section 1135 waiver authorities.

Social Security Act Section 1135—Authorizes the HHS secretary to temporarily waive or modify certain Medicare, Medicaid, Children’s Health Insurance Program (CHIP), and Health Insurance Portability and Accountability Act (HIPAA) requirements affecting healthcare facilities and providers during national emergencies. Section 1135 waivers require both a presidential declaration under the National Emergencies Act or Stafford Act and a public health emergency determination by the HHS secretary under Public Health Service Act Section 319. Once the 1135 waiver authority has been issued, individual providers’ requirements are not automatically modified; the waivers are implemented on a case-by-case basis through the Centers for Medicare & Medicaid Services, HHS regional offices, and state health facility survey agencies.

Volunteer Protection Act—Provides immunity from ordinary negligence to volunteers of nonprofit organizations or governmental entities. It does not cover gross negligence, willful misconduct, recklessness or acts committed by the volunteer while intoxicated or operating a motor vehicle. It does not cover organizational entities of any type or persons volunteering at private businesses. The act does not require a declared emergency for its protections to apply.

Policies

Homeland Security Policy Directives (HSPDs) and Presidential Policy Directives (PPDs)—Presidential directives announce executive policies regarding, among other things, homeland security issues. HSPDs and PPDs establish policies, strategies, and frameworks directing executive agency activities on a range of homeland security matters. Directives important for public health are: HSPD-5 (management of domestic incidents); PPD-8 (national preparedness—formerly HSPD-8); and HSPD-21 (public health and medical preparedness).

National Incident Management System (NIMS)—A system of incident command developed by the Department of Homeland Security to coordinate emergency response efforts at all levels of government and the private sector. It is a scalable system that can be used for events and incidents of all sizes regardless of whether a federal emergency or disaster is declared under the Stafford Act.

National Response Framework (NRF)—A Department of Homeland Security policy document that uses a national, all-hazards approach to describe and integrate roles for governments at all levels and the private sector in preparing, responding, and recovering from emergencies of all sizes, regardless of whether an emergency is declared. The NRF uses NIMS to coordinate response activities. The NRF includes 15 Emergency Support Function (ESF) supplemental documents that detail the roles and responsibilities of governmental and certain private sector capacities in key areas. Relevant to public health are ESF-8 (public health and medical services) and ESF-6 (mass care, emergency assistance, housing, and human services).

National Strategy Documents—Federal legislation and directives mandated the creation of various strategies and plans to chart national emergency planning and response activities. These national strategy documents are intended to complement the National Response Framework and address plans for coordinating with state, local, territorial, and tribal governments and the private sector. Relevant national strategy documents for public health include the National Health Security Strategy, the National Strategy for Pandemic Influenza, and the National Strategy for Homeland Security.

This document was compiled from June-December 2011 and reflects the laws and programs current then. It reflects only portions of the laws relevant to public health emergencies and is not intended to be exhaustive of all relevant legal authority. This resource is for informational purposes only and is not intended as a substitute for professional legal or other advice. The document was funded by CDC Award No. 1U38HM000454 to the Association of State and Territorial Health Officials; Subcontractor PI Elliott, Logan Circle Policy Group.