

Subject Category	Checklist Question	MSEHPA Section ¹	Commentary
	15. What legal responsibilities do local authorities have to communicate with and notify the public independent of state authorities?	202(a)(1) 701(a)	Typically, state statutes or administrative regulations regulate the dissemination of information to the public in the event of a public health emergency, and could require that local authorities communicate with the public if a local public health emergency occurs. Additionally, state or local public health emergency response plans may provide specific requirements for notification and communication with the public. ²⁰
D. Cross-cutting	16. What evidence (or criteria) is legally sufficient for local agencies to initiate a response to a potential outbreak?	104(m)	Procedures for investigating and tracking potential outbreaks are often delineated in state statutes, administrative regulations or state or local public health emergency response plans. ²¹ These may include standards, or bases, on which a local agency is allowed to initiate responses to potential outbreaks. ²² These may be specified in the definition or conception of public health emergency [as in MSEHPA], or be authorized upon the declaration of an emergency. Criteria for the declaration of a public health emergency are included in many state's statutes regulating the state's emergency response system. ²³
III. Response			
A. Facilities	17. Can local officials compel evacuation of a given area?	501(a) 501(d)	Regulations granting local public health officials the power to compel evacuation of a given area in response to a public health emergency may be included in state statutes ²⁴ or administrative regulations regarding emergency response, or in a state or local public health emergency response plan. Performance of evacuations may be coupled with specific notice and other procedures designed to protect the public's health while respecting individual rights and freedoms.
	18. Can local authorities abate nuisances (whether they are defined in state statute, state regulation, or local ordinance) contributing to a public health emergency?	Article V	Local public health officials may have the power to abate nuisances contributing to a public health emergency. These powers may be included in state statutes, ²⁵ administrative regulations, local ordinances, or state or local public health emergency response plans. Nuisance abatement must be performed consistent with advance or forthcoming due process protections, and may require specific additional measures to investigate and substantiate the existence of the nuisance.
	19. Can local officials condemn, remove, or destroy real or personal private property?	Article V 506	Absent finding a public health nuisance, local public health officials' condemnation, destruction, or removal of real or personal private property will likely constitute a taking under constitutional principles, and thus require compensation to property owners. Compensation may be provided for after the fact (in many cases of emergency), and may be limited by state statutes or local ordinances. ²⁶
B. Physical Resources	20. Can local officials use materials and other private property in responding to a public health emergency?	Article II 202(a)(3) 501 502 505	Regulations regarding the use of materials, facilities and other private property during emergency responses may grant local public health officials some authority to utilize private property under varied criteria. Virtually any use of private property for public purposes implicates constitutional takings protections, ²⁷ (as noted in question # 19) unless the use of the property constitutes a public health nuisance (as noted in question # 18).

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	21. Can local officials ration and prioritize the distribution of health care supplies?	505(b)-(d)	Local power to ration and prioritize the distribution of health care supplies in response to a public health emergency may be allowed via state statutes, administrative regulations, state or local public health emergency response plans, or local ordinances. In many states, this power is assumed by state authorities to ensure uniform controls, ²⁸ though larger local governments may share similar powers.
C. Responders	22. What role, if any, do local health officials play in the declaration of a public health emergency on a local or state-wide basis?	401 402	Typically, state statutes set procedures through which a state or local public health emergency must be declared. ²⁹ While such emergencies are most often declared by the Governor (or other politically accountable figure at the state level), the input of local public health officials may be sought during the declaration process, particularly for public health emergencies within local borders. Additionally, local officials may be authorized to declare a local public health emergency through state statutes, administrative regulations, or emergency response plans. ³⁰
	23. Can local officials institute quarantine and isolation?	604	Regulations granting local public health officials the authority to institute quarantine and isolation in response to a public health emergency are found in state or local laws or plans. ³¹ Quarantine and isolation are among the most individually-restrictive powers of government during an emergency. As a result, authority to implement these powers should be well-grounded, provide flexible routes for their accomplishment, and reflect principles of due process that can be accommodated within reasonable proximity to the exercise of these powers. ³²
	24. Can local officials impose curfews or travel restrictions on the public in the event of an emergency?	502(d) 601	The imposition of curfews or travel restrictions may assimilate voluntary quarantine or isolation measures or evacuation powers, but might also be authorized under other statutory or regulatory laws. ³³ These temporary powers are designed to protect the public's health through means that are as non-intrusive as possible. In some jurisdictions, state or local public safety authorities may be specifically authorized to conduct these measures instead of public health authorities.
	25. Can local officials compel vaccination and/or treatment of individuals?	603	Vaccination and/or treatment of individuals during a public health emergency through local officials may be critical interventions to abate the conditions contributing to the emergency. ³⁴ Still, these powers are most often framed in voluntary terms. Thus, public health officials may offer vaccination or treatment programs and provide strong incentives for public participation, but the programs remain voluntary. As in MSEHPA, quarantine and isolation are usually the only public health powers for which applicable members of the public may have to comply.

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D. Private Sector Entities	26. Can local officials direct health care providers and assign them additional responsibilities (such as the performance of medical exams or tests) during emergencies?	608(a) 608(b)	Many states have statutorily addressed whether private health care providers may be directed and assigned public health responsibilities during emergencies. ³⁵ In some cases, the health care providers' performance (or refusal) is tied to their licensing status in the state. In other cases, additional penalties may result. Alternatively, health care workers may volunteer during emergencies pursuant to national or state-based volunteer systems and plans.
E. Data Management	27. What are the legal requirements for local health officials regarding access to and disclosure of identifiable health information that may differ from non-emergency provisions?	607	Federal, state and/or local regulations, ³⁶ including the federal Privacy Rule, ³⁷ delineate specific requirements for the use and disclosure of identifiable health information, including during a public health emergency. Additionally, state statutes, administrative regulations and response plans specifically related to public health emergencies may contain additional requirements. ³⁸ Whenever data sharing involves identifiable health information, local governments may need to examine federal, state, or local health information privacy laws to assess their capability to exchange data for public health purposes.
F. Processes	28. What are the legal procedures (administrative, judicial) required of local officials to institute quarantine and isolation?	605	If local public health officials are empowered to institute quarantine and isolation through state ³⁹ or local laws or plans, legal procedures should be delineated. These procedures may spell out the types and conditions of quarantine or isolation, due process protections, and coordination with public safety authorities.
	29. Can local public safety officials enforce a quarantine or isolation order without judicial authorization (such as a warrant) if an individual subject to the order refuses to comply?	404 605	As noted in question #28, local public health officials may need to coordinate with public safety officials in the enforcement of non-voluntary quarantine or isolation orders. State or local laws may prescribe the manner for seeking this assistance, as well as whether the public safety authority is authorized to enforce the order absent judicial approval in cases on noncompliance. ⁴⁰
G. Cross-cutting	30. What are the legal requirements of local officials to protect individual civil rights or respect religious beliefs concerning public health emergencies that may differ from non-emergency protections?	202(a)(14) 504(c) 604(b)(8) 701(b) 701(c)	Legal requirements of local public health officials to protect individual civil rights or respect religious beliefs or choices in the event of a public health emergency may be expressed in a variety of ways. Federal and/or state statutes may require respect for individual rights related to compulsory medical treatment, vaccination, quarantine and isolation, testing, and health information privacy. State and/or local public health emergency response plans may also mandate respect for individual beliefs or liberties. These legal requirements may assimilate protections during non-emergencies, but might also spell out specific requirements for public health emergencies.
	31. What are local officials' legal duties in the event that martial law is declared by the Governor?	403(a)	Typically, the declaration of martial law by the Governor is regulated via state statutes. If martial law is declared in response to a public health emergency, local officials may be required to perform certain duties under a state or local public health emergency response plans that deviate from standard roles and responsibilities during emergencies.

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	32. What powers and duties are specifically granted to other governmental officials to respond to public health emergencies?		The powers and duties of many governmental actors outside of public health officials may be important components to comprehensive local government public health emergency responses. ⁴¹ These may include local public safety departments, fire departments, local environmental agencies, transit authorities, and local departments of education. These entities and their personnel may serve as first responders to emergency circumstances through EMS or other functions, provide critical support, services, information, or facilities to public health officials, or assist in the provision of needed services to the populations. An assessment of their legal responsibilities through planning or other mechanisms is thus important to local public health emergency response.
	33. When can local public health officials request or require assistance from local law enforcement or emergency management agencies?	404	Many state statutes allow public health authorities to request or require assistance from law enforcement authorities or emergency management agencies when necessary to protect the public's health. ⁴² State statutes or regulations may also allow local public health officials to request such assistance as legally necessary. Additionally, state or local public health emergency response plans may permit public health officials to request or require such assistance. ⁴³
IV. Recovery			
A. Responders	34. What legal responsibilities do local officials have regarding the disposal of infectious waste and human remains post-emergency?	503 504	Local public health officials may be required to participate in the disposal of infectious waste and human remains through state statutes or administrative regulations, state or local public health emergency response plans, ⁴⁴ or written policies, plans, contracts, or agreements. These laws may provide specific measures and procedures to follow to facilitate safe and responsive handling.
	35. What role do local health officials play in monitoring the transportation and disposal of hazardous materials post-emergency?	503 504	Transportation and disposal of hazardous materials (as defined at the federal level or in each state through environmental protection laws) are typically assigned to state environmental authorities. However, local public health officials may have specific roles for the transportation of these materials to protect the public's health as delineated in statutory or regulatory laws, ⁴⁵ written policies, plans, contracts, or agreements.
	36. What legal responsibilities do local officials have to maintain or reinstate the local judicial system in the event of a public health emergency?	202(a)(5)	The maintenance of a local judicial system in the event of a public health emergency is essential to appropriate and adequate response efforts and the protection of individual rights to due process and other protections. State and local public health emergency response plans, ⁴⁶ state statutes, or administrative regulations may require the maintenance of a judicial system on the state and local level during an emergency response. Use of electronic forms of communication, including video, web-based, or teleconferencing, may need to be addressed to assure that judicial processes continue in the event of widespread public health emergencies.

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	37. Is local government responsible for coordinating and providing mental health services following a public health emergency?	702	Provision of mental health services to the general public may be necessitated by the exigencies of the circumstances, and may be required by state ⁴⁷ or local ⁴⁸ emergency response plans, regulations, or statutes. ⁴⁹ Local coordination of these services may be needed to ensure adequate access to mental health services within the jurisdiction.

References:

¹ For a copy of the *Center's* draft Model State Emergency Health Powers Act (MSEHPA), please see our *Center* website at www.publichealthlaw.net/Resources/ModelLaws.htm

² See, e.g., LA. REV. STAT. ANN. § 29:764(A)(3) (West 2003).

³ See District of Columbia Community Emergency Management Plan, Cluster 1, at: http://dcema.dc.gov/dcema/frames.asp?doc=/dcema/lib/dcema/pdf/cluster_1.pdf.

⁴ See, e.g., GA. CODE ANN. § 36-75-5 (2003).

⁵ See, e.g., 20 ILL. COMP. STAT. § 2310/2310-50.5.

⁶ See, e.g., GA. CODE ANN. § 36-75-4 (2003).

⁷ See, e.g., ARIZ. REV. STAT. § 26-345 (1989).

⁸ See, e.g., NEB. REV. STAT. § 81-15, 217 (1997).

⁹ See, e.g., CAL. HEALTH & SAF. CODE § 1797.152 (1989).

¹⁰ See, e.g., CAL. HEALTH & SAF. CODE § 101230 (Deering 1995).

¹¹ See, e.g., GA. CODE ANN. § 36-75-7 (2003).

¹² See, e.g., CAL. HEALTH & SAF. CODE § 101315 (Deering 2002).

¹³ See, e.g., 20 ILL. COMP. STAT. § 2305/2.1.

¹⁴ See, e.g., N.J. STAT. ANN. § 26:4 - 24.

¹⁵ James G. Hodge, Jr., Erin Fuse Brown, and Jessica P. O'Connell, *The HIPAA Privacy Rule and Bioterrorism Prevention, Planning, and Response*, 2:2 BIOSECURITY AND BIOTERRORISM 73 (2004).

¹⁶ See, e.g., N.J. STAT. ANN. § 26:4 - 15.

¹⁷ See State of California Bioterrorism Surveillance and Epidemiologic Response Plan, at: http://www.dhs.ca.gov/ps/dcdc/bt/pdf/CA_BT_Surv_Epi_Plan-2002b.pdf (January 2002).

¹⁸ See, e.g., Cambridge Public Health Department Emergency Operations Plan, Cambridge Massachusetts, at <http://www.cambridgepublichealth.org/publica/phepp.pdf>; District of Columbia Community Emergency Management Plan, Cluster 1, at: http://dcema.dc.gov/dcema/frames.asp?doc=/dcema/lib/dcema/pdf/cluster_1.pdf.

¹⁹ See State of California Bioterrorism Surveillance and Epidemiologic Response Plan, at: http://www.dhs.ca.gov/ps/dcdc/bt/pdf/CA_BT_Surv_Epi_Plan-2002b.pdf (January 2002).

²⁰ See NJ DHSS Terrorism and Public Health Emergency Preparedness and Response Plan, at: <http://www.state.nj.us/health/er/erplan.pdf>.

²¹ See State of California Bioterrorism Surveillance and Epidemiologic Response Plan, at: http://www.dhs.ca.gov/ps/dcdc/bt/pdf/CA_BT_Surv_Epi_Plan-2002b.pdf (January 2002).

²² See Baltimore County Emergency Operations Plan, Annex G, Health, Medical and Mortuary, at: http://resources.co.ba.md.us/Documents/Imported_Documents/a/annexg.pdf

²³ See, e.g., Fla. Stat. ch. 381.00315 (2003).

²⁴ See, e.g., LA. REV. STAT. ANN. § 29:769 (West 2003).

²⁵ See, e.g., MICH. COMP. LAWS § 333.2458 (1978).

²⁶ See, e.g., DEL. CODE ANN. tit. 20, § 3145 (2002).

²⁷ See, e.g., MINN. CONST. art. I, § 13.

²⁸ See, e.g., DEL. CODE ANN. tit. 20, § 3133 (2002).

²⁹ See, e.g., LA. REV. STAT. ANN. § 29:766 (West 2003).

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- ³⁰ See, Ontario County Comprehensive Emergency Management Plan, Ontario County, New York, at: http://www.co.ontario.ny.us/emergency_mgt/occemp.pdf (December 2003).
- ³¹ See, e.g., MICH. COMP. LAWS § 333.2453 (1978).
- ³² See Lawrence O. Gostin & James G. Hodge, Jr., The Model State Emergency Health Powers Act - a brief commentary. Turning Point Statute Modernization Collaborative 1-42 (2002) (also available at *Center's* website at www.publichealthlaw.net/Resources/Modellaws.htm).
- ³³ See, e.g., MICH. COMP. LAWS § 30.410 (1976).
- ³⁴ See Cambridge Public Health Department Emergency Operations Plan, Cambridge Massachusetts, at: <http://www.cambridgepublichealth.org/publica/phepp.pdf>.
- ³⁵ See, e.g., 20 ILL. COMP. STAT. § 3305/7.
- ³⁶ See, e.g., DEL. CODE ANN. tit. 16, § 1232.
- ³⁷ 45 C.F.R. §§ 160, 164 (2000).
- ³⁸ See, e.g., DEL. CODE ANN. tit. 20, § 3139 (2002).
- ³⁹ See, e.g., ARIZ. REV. STAT. § 36-788 (2002).
- ⁴⁰ See, e.g., DEL. CODE ANN. tit. 20, § 3136(5)(d) (2002).
- ⁴¹ See District of Columbia District Response Plan, Health and Medical Services, section V, at: <http://dcema.dc.gov/dcema/cwp/view.a.1226.q.537099.asp>.
- ⁴² See, e.g., S.C. CODE ANN. § 44-1-100 (Law. Co-op. 2003).
- ⁴³ See Lake County Comprehensive Emergency Management Plan, Lake County, Florida, at: http://www.co.lake.fl.us/pdfs/CEMP/CEMP_BasicPlan.pdf.
- ⁴⁴ See, e.g., LA. REV. STAT. ANN. § 29:769(C)(1) (2003).
- ⁴⁵ See, e.g., 430 ILL. COMP. STAT. § 50/4 (1984).
- ⁴⁶ See, e.g., LA. REV. STAT. ANN. § 29:764 (West 2003).
- ⁴⁷ See NJ DHSS Terrorism and Public Health Emergency Preparedness and Response Plan, Chapter 9, at: <http://www.state.nj.us/health/er/erplan.pdf>.
- ⁴⁸ See Pierce County Comprehensive Emergency Management Plan, Pierce County, Washington, at: <http://www.co.pierce.wa.us/text/Abtus/ourorg/dem/EMDiv/CEMP.htm> - ESF8.
- ⁴⁹ See, e.g., LA. REV. STAT. ANN. § 29:770 (West 2003).

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