

Emergency Declarations and Authorities Fact Sheet

Overview

When a government declares a state of emergency—or does not make such a declaration—this decision determines the legal and operational resources available to respond to an emergency and has implications for governments, the private sector, and the public. Understanding the scope of state and federal emergency authorities and how they interact is an important part of preparing for and responding to public health emergencies.

State Emergency Declarations

Authorities Without an Emergency Declaration

State officials have existing broad powers to address emergency situations by virtue of the statutory authorities granted to their positions without formally declaring a state of emergency. A state health officer's existing authorities generally contain a broad grant of authority to, among other things, abate nuisances, investigate the causes of disease, and institute quarantine measures. Depending on the circumstances of an event, these existing powers may be sufficient to adequately respond or allow initial response measures to begin until an emergency is declared. Identifying authorities and capabilities to respond to emergencies without a declaration may be necessary should an event not meet the statutory definition required to trigger an emergency declaration.

Authority to Declare Emergencies

When conditions warrant, all states have mechanisms that allow government officials to declare a state of emergency, thereby activating authorities and resources that are unavailable in non-emergencies (see below). All states give the governor the authority to declare one or more types of emergencies (see below). Increasingly states have granted state health officers/agency directors the authority to declare public health emergencies. Other state officials such as the emergency management agency director, homeland security director, or agricultural director may have similar powers. Local governments may have authority to declare an emergency and activate emergency authorities within their jurisdiction.

Types of State Emergencies

The determination of whether circumstances justify or require the declaration of an emergency depends on conditions set out in state law. Traditionally states have a general statute that permits the governor to declare a state of emergency for any type of emergency or natural disaster, which can be construed broadly to include disease epidemics and other public health emergencies. In the last decade, states have begun to refine their approaches to defining emergencies; a state may have one or more statutory definitions to define emergencies, including "disaster," "emergency," and "public health emergency."¹ In states with multiple types of emergencies, it may be possible to have more than one type of emergency declared at the same time. If so, state officials must clearly understand the authorities that flow from each declaration, agency roles and responsibilities, and the impacts on local governments, the private sector, and the public.

State Emergency Declaration Process

While unique to each state, generally the governor may declare an emergency by issuing an executive order or other declaration to that effect. The declaration addresses the effective dates and duration of the declaration, geographic areas of the state covered, conditions giving rise to the emergency, and the agency or agencies leading the response activities. The declaration may also identify state rules and regulations that are waived or suspended during the emergency. Governors may be required to seek legislative approval for the imposition of a state of emergency within a given time after the declaration (e.g., within 30 days). Alternatively, a governor may be able to declare a state of emergency for a specified period of time, but then would need legislative approval to renew the emergency declaration. For emergencies declared by other state executive officers like state health officers, such declarations may require simultaneous or subsequent approval by the governor and/or legislature. Locally declared emergencies may require approval by a local legislative body, state executive officers, and/or the state legislature.

Actions and Authorities Triggered by State Emergency Declarations

The declaration of a state emergency triggers an array of authorities and actions by state and/or local governments. Depending on the type of emergency declared, and the scope of authority granted to the state official making the emergency declaration, the actions and authorities engaged by a state emergency declaration can include:

- Activation of state emergency response plans and mutual aid agreements.

- Activation of state emergency operations center and incident command system (ICS).
- Authority to expend funds and deploy personnel, equipment, supplies, and stockpiles.
- Activation of statutory immunities and liability protections for those involved in response activities.
- Suspension and waiver of rules and regulations (and statutes, if allowed).
- Streamlining of state administrative procedures such as procurement requirements.

Practice Notes

- Identify the state statutory requirements for declaring emergencies in your state.
- Understand who can declare emergencies, under what circumstances, and the powers that do/do not flow from this declaration.
- Understand the procedures for implementing and the implications of declaring local or regional emergencies within the state and how these compare to statewide emergencies.
- Identify and understand how state requirements are modified when there is a federally declared emergency.
- Understand the legal and programmatic implications where there is no state declaration of emergency but there is a federal declaration of emergency.
- Identify and communicate to relevant audiences the effects of emergency declarations and any changes to regulatory or programmatic activities because of the declaration.

Federal Emergency Declarations and Authorities

As with the states, federal law imbues designated federal officials with broad powers that allow them to respond to and assist states and localities in responding to emergencies even without a federal emergency declaration. Thus, the secretary of Health and Human Services (HHS) has broad authority under Sections 301 and 311 of the Public Health Service Act to provide assistance to states and localities.² Federal law also provides the president and other federal officials with authority to declare emergencies under specified conditions. Some of these federal authorities relevant to the public health context include:

- President—[Stafford Act](#) and the [National Emergencies Act](#).
- HHS Secretary—[Public Health Service Act Section 319](#) and [Social Security Act Section 1135](#).

Actions and Authorities Triggered by Federal Emergency Declarations

Federal emergency declarations activate legal and programmatic responses from federal agencies including:

- Activating federal assistance to states in the form of financial, personnel, services, logistical, and technical assistance.
- Triggering emergency provisions in other laws including Social Security Act Section 1135 waivers and statutory immunities and liability protections, such as the [Public Readiness and Emergency Preparedness Act \(PREP Act\)](#).
- Easing regulatory requirements on individuals, organizations, and state and local governments.
- Activating the [National Response Framework](#), [National Incident Management System](#), and other emergency response protocols and systems.

Implications of State and Federal Emergency Declarations and Authorities

An emergency declaration can change the legal and operational landscape in which governments, private organizations, and the public operate during an emergency. Emergency declarations, especially if they occur at multiple levels (federal, state, local), can confuse organizations and individuals. All state agencies need to understand the implications of operating under an emergency declaration, especially those that are not directly involved in response activities such as state procurement offices. States must also understand the legal and operational effects of a federal emergency declaration. Federal declarations may affect compliance with federal legal and programmatic requirements. Federal declarations generally do not alter state legislative and regulatory requirements; however, state law will be preempted to the extent it conflicts with federal law. State declarations are necessary to modify states legal requirements.

During H1N1, some states declared emergencies, while neighboring states did not. For some states, the relatively mild severity of the H1N1 influenza pandemic did not rise to the level needed to trigger the statutory requirements for an emergency declaration, or made states conclude that existing authorities were sufficient to handle the response. Differences in states' decisions to declare an emergency, as well as the federal declaration and World Health Organization pandemic levels, proved confusing for healthcare providers, the private sector, and the public. State agencies were required to clearly communicate the impact of various declarations had in responding to H1N1.

Sources

¹ HRSA, *Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP) — Legal and Regulatory Issues*. Draft Report. May 2006.

² CDC, Public Health Law Program. "Selected Federal Legal Authorities Pertinent to Public Health Emergencies". September 2009. Available at <http://www2.cdc.gov/phlp/docs/Selected%20Fed%20Legal%20Authorities%20re%20PH%20Emergencies%20102709%20v2.pdf>. Accessed January 31, 2012.

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 LLC.