Public Health Emergency Preparedness Law

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What is the Role of Law in Disasters and Emergencies?

• Laws permeate emergency response at every level of government
  • Define public health or other emergency
  • Create infrastructure to prevent, detect, and address emergencies and disasters
  • Authorize performance (or non-performance) of actions by many actors
  • Determine extent of responsibility for potential or actual harms that may arise during emergencies
Legal Issues That May Arise in Disasters and Emergencies

• Can the scope of practice of health care practitioners be modified or expanded to address medical surge?

• Can health care practitioners from other states provide services in the disaster-affected area?

• How should volunteers be credentialed and privileged?

• What liability protections are available to volunteers?
Constitutional Framework for Public Health Response in the United States
Public Health and the US Constitution

• Under the US Constitution, the states have primary authority over public health matters through the 10th Amendment

• All laws not specifically delegated to the Federal government nor expressly prohibited by it are reserved to the states — POLICE POWERS
Examples of Police Power

Image: Fox News

Image: https://sph.umich.edu/research-projects/data/groups/46/1_PA_LabSec_opt.jpg


Individual Liberty Interests and Due Process Protection

• U.S. Constitution, 5th and 14th Amendments
  – 5th Due Process Clause: “nor be deprived of life, liberty, or property, without due process of law”
  – 14th Amendment makes “due process” applicable to states
Jacobson v. Massachusetts

• 1902 smallpox outbreak in Cambridge, MA

• Statute compelled vaccination of residents not recently vaccinated

• Jacobson refused vaccination ordered by Cambridge Board of Health and was fined $5
Jacobson v. Massachusetts

Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.
Jacobson Principles

• States may issue and enforce reasonable regulations to protect the community’s health IF the community demonstrates a compelling reason

• Courts will defer to public health agencies as long as their decisions are backed by sound public health evidence: SCIENCE

• Public health agencies may not exercise their authority in an arbitrary or capricious manner

• Public health agencies must use the least restrictive means when imposing restrictions on individual liberty
New York City Measles Outbreak

• New York City declared a public health emergency on April 9, 2019 and ordered any person who lives or works in designated zip codes who had not received the MMR vaccine to be vaccinated unless they could otherwise show they had immunity.

• If the Health Department identifies a person with measles or an unvaccinated child exposed to measles in the designated zip codes, that individual or the parent/guardian could be fined $1,000.
New York City Measles Outbreak

• The order was upheld by a NYC judge on April 18, 2019

• So far 12 people have been summoned to court for refusing to comply with the since the city began enforcing it last week.
ABOUT THE MANUAL

No matter the cause, government must be prepared to address the many legal issues that may arise in a public health emergency situation. The DC Public Health Emergency Law Manual is intended to serve as a resource for public health practitioners, lawyers, and judges to learn more about the legal issues that may arise as they prepare for public health emergencies in the District of Columbia.

http://dclaw.dohcloudservices.com/
Access to Primary Care after Disasters

- Research Goal: Minimize disruptions of access to primary health care services during recovery from major disasters.
- Looked at many legal issues to inform the model:
  - Emergency Declarations and Waivers of Law
  - Practitioner Scope of Practice and Licensure Portability
  - Mobile Health Clinics
  - Pharmacies and Access to Prescription Medications
  - Crisis Standards of Care
  - Volunteer Health Practitioners Immunity and Liability
Questions?

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