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## The 2015 Legal Preparedness Roadshow: A Summer Road Trip to Teach Government Personnel the Basics of Public Health Emergency Law

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Planning, simulations, and post-emergency assessments have demonstrated that successful public health emergency response hinges on the effective use of relevant legal authorities for legal preparedness.<sup>1</sup> Public health practitioners must have a better understanding of the legal underpinnings of emergency preparedness and response systems, including knowing what actions are authorized and how to minimize liabilities during large-scale public health emergencies.<sup>2</sup> In May 2015, the Public Health Law Program (PHLP) at the Centers for Disease Control and Prevention (CDC) embarked on a unique effort to train state and local public health personnel on the intricacies of legal issues in emergency preparedness and response over the course of one summer. This course was also offered to CDC staff because knowledge regarding state and local legal issues in emergencies is vital to their ability to work with partners in the field.

By August, PHLP staff had travelled to 11 states and delivered 13 *Public Health Emergency Law 4.0* trainings to nearly 550 people. The summer road trip was exciting and enlightening and made the case for providing future public health law trainings.

### I. How PHLP reached out to jurisdictions

First, PHLP reached out to contacts in state and local health departments. Using health department attorney workgroups coordinated by the Association of State and Territorial Health Officials (ASTHO) and the National Association of County and City Health Officials (NACCHO), PHLP invited state and local health departments to reach out if they wanted to

<sup>1</sup> See Anthony Moulton et al., "What is public health legal preparedness?" 31(4) *J. Law Med. Ethics* 672 (2003); see also Georges Benjamin and Anthony Moulton, "Public Health Legal Preparedness: A Framework for Action," *J. Law Med. Ethics* 36(s1): 13–17 (2008).

<sup>2</sup> As noted in one of four action agendas produced from the National Summit on Public Health Legal Preparedness, "...public health practitioners and their counsel are not in all cases comfortable making use of existing legal authorities, even if they are familiar with those laws, or are using versions of law that are not up-to-date. Reasons suggested for this include: lack of familiarity with the law; confusion over perceived and actual conflicting authorities; distress over conflicting ethical considerations; and perceived and real political considerations...[A]ttorneys, practitioners, elected and appointed officials, and the general public may need ongoing training and education to continuously improve their understanding, use, and reaction to application of the law in situations involving public health emergencies." Robert M. Pestronk et al., "Improving Laws and Legal Authorities for Public Health Emergency Legal Preparedness," 36(s1) *J. Law Med. Ethics* 47, 48 (2008). Version 1.0 of *Public Health Emergency Law* was developed to meet this need for training on legal preparedness for public health practitioners. The updated version 4.0, and the 2015 roadshow, continue the mission to fill the gap identified in 2007.

host a training delivered by the CDC. The training, delivered by PHLP subject matter experts, was offered at no cost to the states and localities; they needed only to provide the space and interested participants for training. In two states (Oklahoma and Colorado), PHLP was able to deliver additional trainings in different parts of each state to enable those from different areas to attend.

Although the training requests came from state and local health departments, partners were encouraged to invite state, tribal, local, or territorial emergency planners and managers, first responders, or Voluntary Organizations Active in Disasters (VOADs) to attend. The goal was to reach as many people as possible who have a role in responding to public health emergencies.

Once the logistics were finalized, PHLP began customizing the course material, often with the assistance from state and local health department counsel.

## II. Buy-in from health department attorneys

While the primary purpose of the trainings was to provide attendees with an overview of legal issues related to emergency response, they were also an opportunity for health department staff to meet with their jurisdictions' attorneys. Prior to the training, PHLP reached out to the state and local attorneys who represented the various jurisdictions to request their presence and participation, and encouraged them to customize and deliver at least one section of the course to the attendees. While their participation was purely voluntary, the attorneys presented their slides, specific to their jurisdiction's laws, for every training. As a result, attendees were able to meet the attorneys representing their health department, ask them jurisdiction-specific questions, and see firsthand the vital role they play in preparing for and responding to public health emergencies.<sup>3</sup>

## III. Course content and format

*Public Health Emergency Law 4.0* was designed to deliver four units of competency-based training, followed by an interactive case study. The first unit, Public Health Law 101, provides an overview of the American legal system, including the legislative process and the importance of regulations and the courts. It demonstrates the vital role that law plays in the public health system.

The rest of the training, based on the [Public Health Emergency Law Competency Model](#),<sup>4</sup> is divided into three legal preparedness units aligned with the three domains of the competency model: 1) Systems Preparedness and Response, 2) Management and Protections of

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<sup>3</sup>Given recent events, most local and state attorneys chose to develop and present a section on their jurisdiction's isolation and quarantine authorities.

<sup>4</sup>The *Public Health Emergency Law Competency Model*, US CENTERS FOR DISEASE CONTROL AND PREVENTION, available at [www.cdc.gov/phlp/publications/topic/phel-competencies.html](http://www.cdc.gov/phlp/publications/topic/phel-competencies.html) (last visited Nov. 20, 2015). The *Public Health Emergency Law Competency Model* is a set of competencies in public health emergency law for mid-tier public health professionals developed by PHLP at the request of CDC's Office of Public Health Preparedness and Response in 2012. The competencies offer a set of core standards that aim to ensure that mid-tier public health professionals both understand the legal framework and can skillfully apply legal authorities to public health emergency preparedness and response activities. Montrece Ransom and Acasia Olson, [Legal Preparedness for Public Health Emergencies: A Model for Minimum Competencies for Mid-Tier Public Health Professionals](#), Centers for Disease Control and Prevention (September 17, 2012).

Responders and the Public, and 3) Protection and Use of Property and Supplies. Each unit gives learners opportunities to interact, ask questions, and answer key questions about the content of each section.

The first legal preparedness unit, Systems Preparedness and Response, provides an overview of the role of attorneys in public health preparedness and how the American legal system (including the system of federalism) affects the composition and actions of the local, state, tribal, and federal emergency response systems. This unit includes ways to engage agency attorneys in preparedness, response, and recovery; the varying powers that local, state, tribal, and federal governments have; and an explanation of local, state, tribal,<sup>5</sup> and federal emergency declarations. For example, participants are educated on the different types of emergency declarations at the various levels of government (i.e. natural disaster versus public health emergencies), the underlying authorities governing the powers and duties declarations can create, and the relationship between state and tribal declarations and federal Stafford Act declarations.

The next unit, Management and Protections of Responders and the Public, focuses on how government authorities can affect the rights and responsibilities of individuals, groups, and responders. It provides a useful survey of these issues and includes a discussion of mandatory public health control measures (such as isolation, quarantine, and due process-related issues), legal considerations for special populations and mass evacuations, liability, credentialing, and workers' compensation issues affecting emergency responders. In the wake of Ebola, PHLP tailored these trainings to pay special attention to isolation and quarantine laws, and as a result, these sections were most often delivered by a local or state health attorney using only the jurisdiction's laws and regulations. For example, in Maricopa County, Arizona, an attorney representing the state health department presented on the role of health department personnel in process of obtaining quarantine orders, the procedures and burden of proof required by law, and the impact emergency declarations can have on the legal requirements for isolation and quarantine orders.

The final unit, Protection and Use of Property and Supplies, provides an overview of the government's ability to destroy, seize, and control the public's use of property and supplies (including a review of the concepts of just compensation, public use, material licensure and emergency exceptions), and the liability protections for medical countermeasures such as the Public Readiness and Emergency Preparedness Act.<sup>6</sup>

Once attendees received the training in the four units, they then had an opportunity to apply their knowledge to an interactive case study centered on a fictional smallpox outbreak in a

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<sup>5</sup>For an analysis of tribal emergency declaration authorities, see Gregory Sunshine and Aila Hoss, *Emergency Declarations and Tribes: Mechanisms Under Tribal and Federal Law*, 24 Mich. St. Int'l L. Rev. 33 (2015), available at <http://digitalcommons.law.msu.edu/ilr/vol24/iss1/2>.

<sup>6</sup>Public Readiness and Emergency Preparedness (PREP) Act of 2005, Pub. L. No. 109-148; 42 U.S.C. §§ 247d-6d, 247d-6e. "The PREP Act authorizes the Secretary of HHS to issue a declaration that provides immunity from tort liability for claims of loss (except willful misconduct) caused by, arising out of, relating to, or resulting from administration or use of countermeasures to diseases, threats and conditions determined by the Secretary to constitute a present or credible risk of a future public health emergency. The immunity applies to entities and individuals involved in the development, manufacture, testing, distribution, administration, and use of such countermeasures." Centers for Disease Control and Prevention: Public Health Law Program, *Selected Federal Legal Authorities Pertinent to Public Health Emergencies* at 8 (August 2014), available at <http://www.cdc.gov/phlp/docs/ph-emergencies.pdf>.

city. The scenario begins with one patient in a hospital emergency department and quickly grows in scope. As it unfolds, participants are asked to answer eight questions that arise during public health emergencies:

1. Can a public health emergency be declared?
2. Can we investigate contacts?
3. Can we examine and test people?
4. Can we treat and vaccinate?
5. Can we isolate and quarantine?
6. Can we use nongovernmental personnel?
7. Are we liable?
8. Can we obtain facilities and supplies?

To answer the questions, however, attendees are first required to become familiar with their own jurisdictions' laws.

To provide attendees with hands-on practical experience with their own jurisdiction's laws, PHLP compiled a collection of state and local public health and emergency management statutes and regulations for each jurisdiction, which were found using simple keyword searches designed to identify authorities relevant to the eight questions above. The exact text of the statutes and regulations was provided, and attendees were asked to try to find the answers for each question with the text of law.

Attendees were able to see how their roles and responsibilities are expressed in statutory and regulatory language. Most were surprised to see how verbose many laws are, and they came away with a new appreciation for their health department counsel. Further, by requiring attendees to read the laws and seek answers to the eight questions before the case study, they learned what tools were in their toolbox and when and how to use them.

Once the case study unfolded, attendees were then given a context in which to apply these authorities, which let them not only see what authorities exist but also demonstrate the importance of understanding the specific circumstances in which certain authorities may be used. For example, since the questions are purposefully vague in terms of who "we" refers to, learners had to examine the law, see who authorities were provided for, and determine whether the actors in the case study had those powers (e.g., did local officials have the authority to isolate and quarantine, or was that power reserved to the state?).<sup>7</sup>

#### IV. Delivery to CDC staff

CDC University provides learning and professional development opportunities for CDC personnel in a wide variety of areas. PHLP had two goals in mind for the course. The first

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<sup>7</sup>For example, in Colorado, state health officials would look to C.R.S.A. § 25-1.5-102. *Epidemic and communicable diseases--powers and duties of department* for state isolation and quarantine authorities, whereas localities would have to look to *C.R.S.A. § 25-1-5066, County or district public health agency* for local isolation and quarantine authorities.

was to ensure that CDC staff could receive competency-based training on the potential legal issues that might arise in a public health emergency so they could respond more effectively when helping state, tribal, local, and territorial public health practitioners with preparedness and response. The focus on state law and federalism<sup>8</sup> is particularly important for CDC personnel, who are often called upon to deploy to states for public health emergencies. As all public health actions must be authorized in federal or state constitutions, statutes, or regulations, public health cannot operate in the system of government without the legal authority to do so. Essentially, there is no public health without the law. Providing federal staff with the legal framework for state preparedness and response will help better ensure coordination and collaboration on the ground.

The second goal of the course was to get feedback from CDC personnel on the curriculum and to learn from the participant's perspective what worked, what didn't, and how to improve the course for wider delivery to external audiences.

The pilot course for CDC staff was extremely well received and is now a permanent listing in the CDC University course schedule. It is delivered twice a year, including this last summer as part of the 2015 roadshow, and has recently been added as a self-reported deployment training course for CDC staff who were called upon to deploy in response to the 2014–2015 Ebola outbreak.

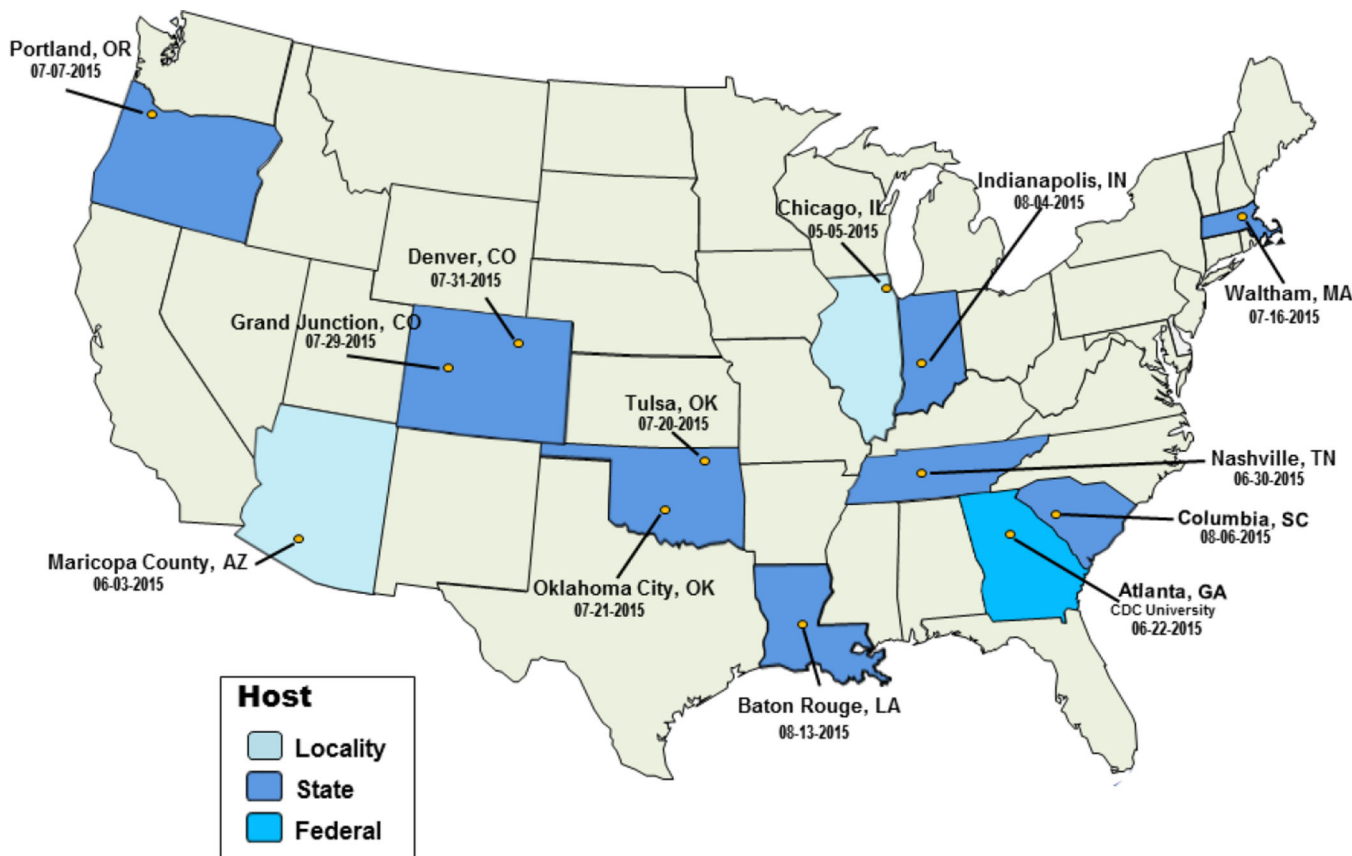
## V. Impact and evaluation

By the end of summer 2015, almost 550 people attended the *Public Health Emergency Law 4.0* trainings. Two of these trainings were initiated by local health departments: Chicago, Illinois and Maricopa County, Arizona. Ten were requested by state health departments: Tennessee, Oregon, Massachusetts, Oklahoma (trainings in Tulsa and Oklahoma City), Colorado (trainings in Grand Junction and Denver), Indiana, South Carolina, and Louisiana. One course was delivered to CDC staff in Atlanta, Georgia.

Map of the 2015 Public Health Emergency Law Roadshow

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<sup>8</sup>“Although the federal government does have some quarantine authority, its quarantine powers are limited to situations involving international or interstate transportation or intrastate communicable diseases where the state's response is so ineffective it poses a serious threat to other states. Federal quarantine authority is also limited to certain listed diseases, including viral hemorrhagic fevers such as Ebola. Responsibility for public health resides primary with states, with certain powers often delegated to local public health agencies. This public health authority derives from the police powers granted by state constitutions and reserved to them by the Tenth Amendment to the US Constitution.” Markey M, Ransom MM, Sunshine G, “Ebola: A Public Health and Legal Perspective.” *ABA Health eSource*, Vol. 11 No. 5 (January 2015), Available at: [http://www.americanbar.org/publications/aba\\_health\\_esource/2014-2015/january/ebola.html](http://www.americanbar.org/publications/aba_health_esource/2014-2015/january/ebola.html).



Before each class started, each attendee was given a 10-question pre-test to determine their knowledge level. When the class was over, attendees answered the same 10 questions again. Over the course of one summer, the participants demonstrated a 22 percent increase in knowledge when comparing the average pre-test score of 79 percent with the average post-test score of 96 percent.<sup>9</sup>

These results demonstrate that not only do attendees find legal preparedness trainings useful, but trainings such as this also can have a demonstrably significant impact on the knowledge, skills, and abilities of public health emergency personnel.

## VI. Conclusion

Throughout 2016, it is PHLP's goal to continue to provide valuable competency-based trainings, webinars, and presentations on a wide variety of public health law issues. These trainings are vital to ensuring that health department personnel understand the complex legal issues that can arise and the importance of engaging legal counsel early and often. For more information on when these resources are being offered, visit [www.cdc.gov/phlp](http://www.cdc.gov/phlp), subscribe to [Public Health Law News](#), or [phlawprogram@cdc.gov](mailto:phlawprogram@cdc.gov).

<sup>9</sup>When evaluating Public Health Emergency Law 4.0, more than 98 percent of attendees reported being satisfied or very satisfied with the course.