



# The Center for Law & the Public's Health at Georgetown & Johns Hopkins Universities

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## Public Health Law and Disasters

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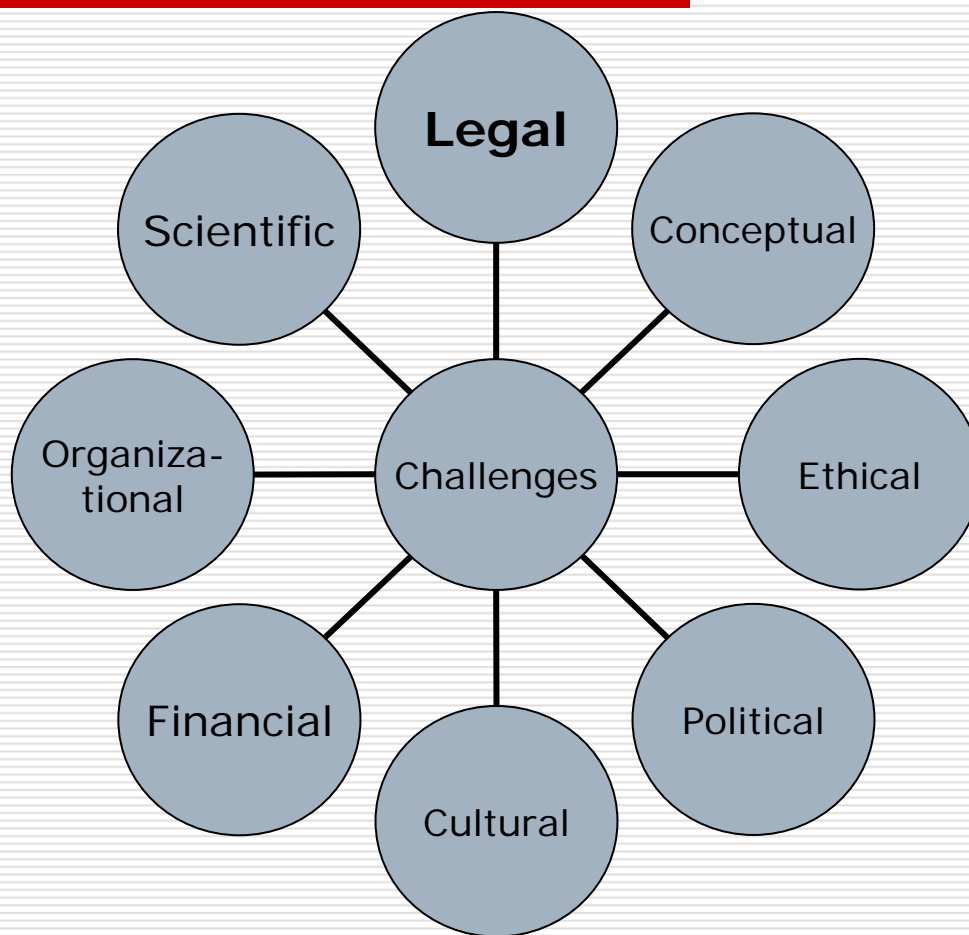
# A Brief Overview: Objectives

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- Public Health as a Component of Disaster Response
- What is Public Health Law?
- Public Health Law Reform
  - Model State Emergency Health Powers Act
  - Turning Point State Public Health Act
- Health Responders During Disasters
- Legal Challenges for Future Disaster Threats

# Scope of Public Health Challenges

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# Conceptual Challenge – What is Public Health Law?

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Public health law is no longer viewed narrowly as a subset of health law focused on the practice of laws concerning communicable diseases, public health nuisances, and sanitation.

# What is Public Health Law?

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The legal powers and duties of government used **primarily** *to assure the conditions for people to be healthy* (e.g., to identify, prevent, and ameliorate risks to health in the population), and . . .

# What is Public Health Law?

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the **structural** (e.g. separation of powers, federalism) and **rights-based** (e.g. privacy, liberty, autonomy) **limitations** on the power of the state to act in the interests of the public's health or constrain legally-protected interests of individuals.

# Public Health Law Includes:

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- Constitutions
- Statutes, Ordinances, Legislative Resolutions
- Administrative Regulations
- Cases (Common Law)
- Public health policies
- Contractual and others obligations
- Treaties

at international, federal, tribal, state, and local levels of government. Comprehensive understanding requires knowledge of these varied types and levels of law.

# What are the Characteristics of Public Health Law?

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- Government
- Populations
- Relationships
- Services
- Coercion

# State Public Health Law Assessment Findings

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- *Antiquated.* Public health statutes are outdated. Old laws are not necessarily bad laws, until they fail to reflect:
  - Modern constitutional norms
  - Modern principles of public health and biological sciences
  - Modern conceptions of individual and population ethics

# State Public Health Law Assessment Findings

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- *Unfocused.* Public health law does not always articulate a clear mission for public health, nor reflect core or essential public health services.

# State Public Health Law Assessment Findings

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- *Inconsistent and Complicated*

Public health law is varied and complicated, difficult for the public to comprehend and challenging for health officials to implement. Inadequate guidance in statutes leads to questions about the authority and exercise of public health powers.

# Benefits of Public Health Law Reform

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- Modernize and amend antiquated laws to keep pace with scientific developments
- Comply with modern constitutional, legal, and ethical norms
- Clarify public health legal powers and duties
- Stimulate public health dialogue with policy makers and communities
- Improve communication and working relationships within the public health system
- Improve public health programs/outcomes
- **Improve public health emergency response**

# Risks of Public Health Law Reform

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- Statutory modifications may change the landscape of public health practice
- Changes in public health laws can add costs without matching resources
- Statutory reform in state legislatures is fraught with potential complications and compromises
- Modernizing public health laws does not assure modernized public health practices

# Model Public Health Acts and Other Resources

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- Model State Emergency Health Powers Act
- Turning Point Model State Public Health Act
- BT Preparedness Checklists and Memos
- ESAR-VHP Legal Report and Toolkit
- Hurricane Legal Response Resources

# Model State Emergency Health Powers Act

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- Drafted in the months after the September 11 attacks by the Center for Law and the Public's Health in collaboration with other partners.
- The Act was designed to be a model state public health law for preparing for and responding to public health emergencies.

# Model State Emergency Health Powers Act

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- Five major sections:
  - Preparedness
  - Surveillance
  - Management of property
  - Protection of persons
  - Communications

# Model State Emergency Health Powers Act

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- State Legislative Update
  - The subject matter of the Model State Emergency Health Powers Act has already been featured in state legislative bills or resolutions introduced in 45 states since December 2001. Provisions in 37 of these states and DC have been passed or enacted.

# Turning Point Model State Public Health Act

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To transform and strengthen the legal framework for the state public health system through a collaborative process to develop a model state public health law.

# Turning Point Model State Public Health Act

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***Scope.*** *The Turning Point Act is the most comprehensive model state public health act ever produced in the United States.*

# Turning Point Model State Public Health Act

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Topics addressed within the Act's 9 substantive Articles include:

- Mission and Functions
- Public Health Infrastructure
- Collaboration and Relationships
- Public Health Authorities and Powers
- Public Health Emergencies (re: the MSEHPA)
- Public Health Information Privacy (re: the MSPHPA)
- Administrative Procedures, Criminal/Civil Enforcement

# Turning Point Model State Public Health Act

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- State Legislative Update
  - The subject matter of the Turning Point Act has already been featured in 78 different state legislative bills or resolutions introduced in 32 states since January 1, 2003. 30 of these provisions have passed or been enacted.

# Emergency Declarations [cont.]

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- **“Public health emergency”:**

An occurrence or imminent threat of an illness or health condition that (1) is believed to be caused by any of the following:

- Bioterrorism
- Natural disaster
- Appearance of a novel or previously controlled or eradicated infectious agent or biological toxin
- Chemical attack or accidental release
- Nuclear attack or accident; and

# Emergency Declarations [cont.]

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(2) poses a high probability of any of the following harms occurring in a large number of the affected population:

- Death
- Serious or long-term disability
- Widespread exposure to infectious or toxic agent posing significant risk of substantial future harm

# Emergency Declarations [cont.]

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Once an emergency has been declared, the legal landscape changes.



# Public Health Laws: Practical Questions

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- ◆ Can we declare a public health emergency?
- ◆ Can we investigate contacts?
- ◆ Can we examine and test people?
- ◆ Can we share information?
- ◆ Can we treat and vaccinate?
- ◆ Can we isolate and quarantine?
- ◆ Can we obtain facilities and supplies?
- ◆ Can we use non-governmental personnel?
- ◆ Are we liable?

# Emergency Declarations

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Individuals are bestowed special protections



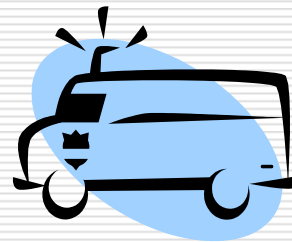
Government is vested with specific powers to facilitate emergency responses



State licensure requirements may be waived



Responders may be protected from civil liability



# Public Health and Disasters: Issues

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- Use of coercive powers
  - 1) quarantine & isolation;
  - 2) vaccination programs;
  - 3) medical testing;
  - 4) property issues;
  - 5) information sharing
- Dual Declarations
- Legal Protections for Responders

# Dual Declarations

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- Every state has the ability to declare a “general emergency” or “disaster”. The powers and processes that arise from such declarations vary between states.
- Some states authorize declarations for “public health emergencies” and “general emergencies.”
- Emergency powers, legal protections, and operational definitions may be inconsistent in “dual declaration” states.

# Legal Issues for Responders

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- Civil and Criminal Liability Protections
- Workers' Compensation Provisions
- Licensure Portability
- Right to Reemployment



Emergency System for Advance  
Registration of Volunteer Health  
Professionals (ESAR-VHP)

# Conclusions

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- The Model State Emergency Health Powers Act and the Turning Point State Public Health Act are useful models for state public health authorities to assess their existing laws
- The goal is not to reform public health law for the sake of reform. Rather, the objective is to use law as a tool for improving public health outcomes and appropriately responding to disasters
- Emergency health powers should be clearly addressed in law
- Reform of emergency health powers should be addressed proactively, before an actual emergency occurs
- Coordinated laws and policies are vital to success

# Conclusions

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- For more information, please see the *Center for Law and the Public's Health Website* at:  
[www.publichealthlaw.net](http://www.publichealthlaw.net)
- If you have any questions, please contact me at [gable1@law.georgetown.edu](mailto:gable1@law.georgetown.edu).
- ***Thank You!***