

# An Introduction to Legal and Administrative Preparedness for Tribal Nations

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Division of Partnership Support  
Office of Public Health Law Services**

Tribal Public Health Emergency Preparedness Conference

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# DISCLAIMER

- The contents of this presentation have not been formally disseminated by CDC and should not be construed to represent any agency determination or policy.
- These materials are for instructional use only and are not intended as a substitute for professional legal or other advice.
- Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.

# Office of Tribal Affairs and Strategic Alliances

## Our Mission:

To improve health outcomes for American Indian/Alaska Native populations by upholding tribal sovereignty and fostering respectful government to government relationships



## Why Engage with OTASA?

- ✓ Honor and affirm tribal sovereignty
- ✓ Support the federal trust and government-to-government responsibilities
- ✓ Access CDC Subject Matter Experts
- ✓ Promote respectful communication

## We Are Here For You!

Connect with us at [TribalSupport@cdc.gov](mailto:TribalSupport@cdc.gov) for engagement, technical assistance, data requests and more

# Division of State and Local Readiness (DSLRL)

- Help state and local, and territorial health departments prepare, respond, and recover from emergencies and disasters
- Monitor and evaluate public health capabilities, plans, and operational readiness of state, local, and territorial recipients
- DSLR's funding and technical expertise supports public health preparedness and response nationwide



# Office of Public Health Law Services (OPHLS)

**Vision:** A public health infrastructure that protects the public by effectively using law to prevent, detect, and respond to infectious disease and emerging health threats.

**Mission:** To strengthen public health infrastructure by enhancing jurisdictions' capacity to use law to prevent, detect, and respond to infectious disease and other health threats through public health law practice and innovating public health law science.



## **PRIORITY #1**

Advance Public Health Law Training, Curricula, and Teaching



## **PRIORITY #2**

Advance the Public Health Law Evidence Base



## **PRIORITY #3**

Create and Expand Career Pathways



## **PRIORITY #4**

Cultivate Partnerships to Better Serve Public Health Needs

To access trainings and resources, request for technical assistance, and subscribe to the Public Health Law News, visit [www.cdc.gov/phlp/](http://www.cdc.gov/phlp/).

# Public health legal preparedness courses

## Public Health Emergency Law (PHEL)

- Introductory, all-hazards focused course, appropriate for multidisciplinary audiences
- Competency-based
- Covers legal issues that can arise during public health emergencies, including–
  - Basics of public health law, emergency declarations, isolation & quarantine, evacuations, liability and immunity, and property
  - Interactive, jurisdiction-specific case study
- Interactive Legal Preparedness workshop

## Law and Epidemic Emergency Preparedness (LEEP)

- Intermediate, infectious disease-focused course, appropriate for health department personnel
- Competency-based
- Explores the legal lessons learned from the Ebola response
  - Applies lessons to future communicable disease emergencies
- Includes investigations, interventions, transportation, treatment, waste disposal, and burial

Available at no cost in-person and online at <https://www.cdc.gov/phlp>



# Tribal legal preparedness trainings



## Training

Four modules were developed by the TLPP:

- What Is Legal Preparedness And Why Is It Important To Tribal Nations
- Jurisdictional Issues And Using The Law To Enhance Cross Jurisdictional Collaboration
- Disaster Declarations
- Best Practices

The modules provide an introduction to legal preparedness that can be used to educate Tribal leadership, discuss how the law can be used to achieve cross-jurisdictional coordination, and explain the disaster declaration mechanism, including the new direct Tribal disaster declaration process. The last module provides an array of best practices shared by Tribal Nations, including audio and video recordings of Tribal public health/emergency management practitioners, so that Tribal Nations are sharing their success stories and helping other Tribes.

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<http://www.tlpp.pitt.edu/>

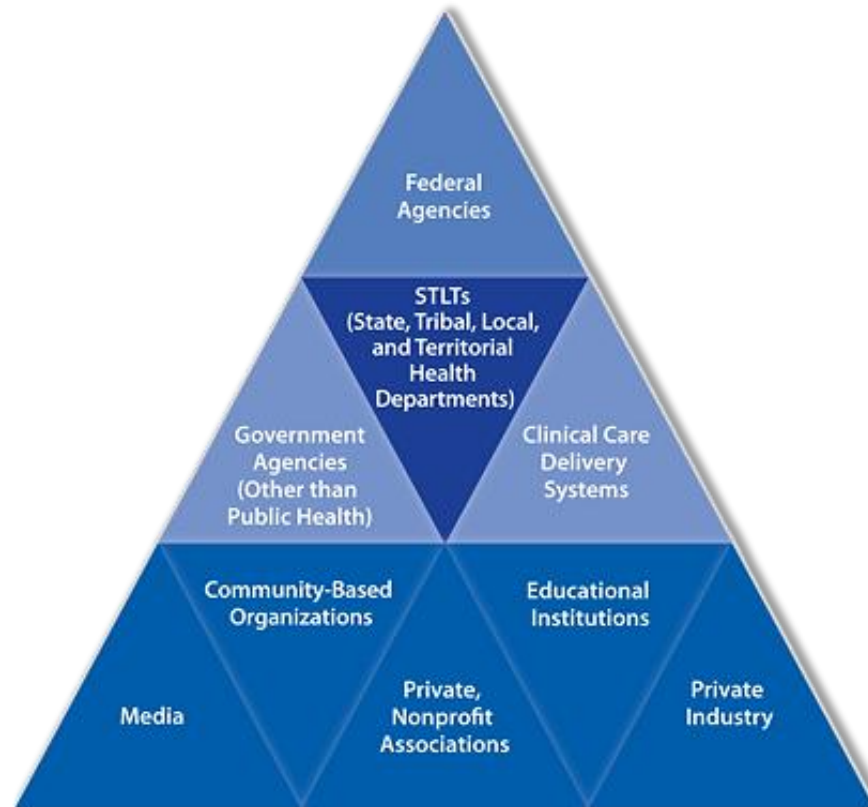


# Learning objectives

- 1. Understanding Legal Preparedness:** Provide an overview of the role of law as a tool in carrying out public health emergency response authority.
- 2. Operationalizing Legal Preparedness:** Describe best practices for recognizing perceived and actual legal barriers to implementing response actions and incorporating legal requirements and procedures into preparedness plans and activities.

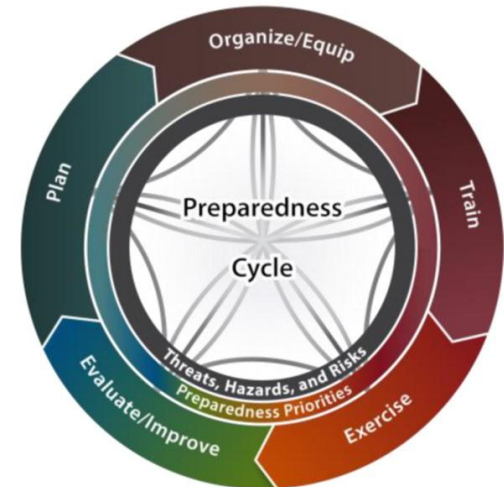
# **An introduction to legal preparedness**

# The US public health system



# Role of law: before, during, and after an emergency

- Provides the agency with necessary **authorities and policies** and **governs how they're used**
- Attorneys anticipate, protect, and defend the agency against legal liability to **maximize effectiveness** and **minimize legal exposure** by—
  - Triaging legal issues and answering legal questions
  - Incorporating law in SOPs, plans, and strategies
- After-action **reviews** that **examine legal and administrative** issues allow the agency to determine how to—
  - Improve response **procedures**
  - Develop needed legal **improvements**
  - Identify needed law-related **competencies**



# Legal tools in emergencies

- Emergency laws can establish alternate legal and administrative systems to protect the public
- Often, the powers are triggered by a...
  - federal/state/tribal/local/territorial...
    - declaration/proclamation of a...
      - disaster/emergency/public health emergency/catastrophic health emergency/public health disaster.



# Tribal emergency preparedness authorities

- As sovereign nations, Tribes have inherent authority to protect the public health and welfare of their citizens
- Thus, in the context of emergency preparedness, Tribes have the authority to engage in preparedness and response activities using the methods that are most appropriate for their communities
- Tribal governance is rich with examples of emergency preparedness and response authority
  - Tribal constitutions
  - Tribal codes
  - Tribal emergency management policies and plans

# Emergency authorities through policies

- A Tribe's policies or procedures may allow emergency action to be taken to respond to a threat
- Example:
  - “Procurement by noncompetitive proposals may only be used when the **department director** and/or **designated administrative staff person** has **documented** that one of the following circumstances applies: ...(ii) The **public exigency or emergency** for the requirement will not permit a delay resulting from competitive solicitation;”



# Tribes and cross-jurisdictional coordination

- Intergovernmental agreements formalize arrangements to share data, personnel, and other resources
  - Mutual aid agreements
  - Memoranda of understanding
  - Tribal emergency mutual aid compacts
- Best Practices:
  - Including sovereignty language
  - Creating one umbrella and then add addenda
  - Designating specific personnel

## MUTUAL AID AGREEMENT FOR TRIBES AND LOCAL HEALTH JURISDICTIONS IN WASHINGTON STATE

This Mutual Aid Agreement for Tribes and Local Health Jurisdictions in Washington State ("Agreement" or "MAA") is made and entered into by the signatory Local Health Jurisdiction(s) within the State of Washington that operate(s) a public health department(s) or division(s) within their county government(s) and the signatory Tribal Government(s) individually with all other signatory parties legally joining the Agreement.

1. **PURPOSE.** Each Party recognizes that public health emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential for the protection of lives and for best use of available assets. This Agreement shall provide for mutual assistance among the Parties in the prevention of, response to, mitigation of and recovery from, any public health emergency, public health disaster, or public health incident. The intent of this Agreement is to make equipment, personnel and other resources available to other Parties to the Agreement.
2. **DEFINITIONS.**
  - a. **Assistance:** Assistance means personnel and resources provided by a Responding Party in response to a request from a Requesting Party.
  - b. **Authorized Representative:** The person or persons designated by each Party on the Mutual Aid Request Form to request Assistance from or grant assistance to another Party pursuant to the terms of this Agreement.
  - c. **Public Health Officer:** The legally qualified individual who has been appointed as the health officer for the tribe, county or district public health jurisdiction, whose qualifications are set forth in tribal code or in RCW 70.05 and RCW 70.08 et seq.
  - d. **Mutual Aid:** A prearranged written agreement whereby assistance is requested and may be provided under the terms of this Agreement between two or more jurisdictions during a public health incident, emergency or disaster, or related to day-to-day public health services, communicable disease outbreak, isolation and quarantine public health services, or any other public health service or action permitted by law.
  - e. **Mutual Aid Request Form:** The form used between the Responding and Requesting Parties to facilitate requests for mutual aid, estimate reimbursement costs, and assist in proper record keeping.
  - f. **Operational Control:** Operational control means the limited authority to direct

American Indian Health Commission's [Template Mutual Aid Agreement for Tribes and Local Jurisdictions](#)

# What is public health legal preparedness?

- Understanding the role of **law as a tool** in carrying out public health emergency response authority
- Recognizing **perceived and actual legal barriers** to implementing certain response actions
- Incorporating legal requirements and procedures into **preparedness plans, exercises, and activities**

**Operationalizing legal preparedness through  
administrative preparedness**

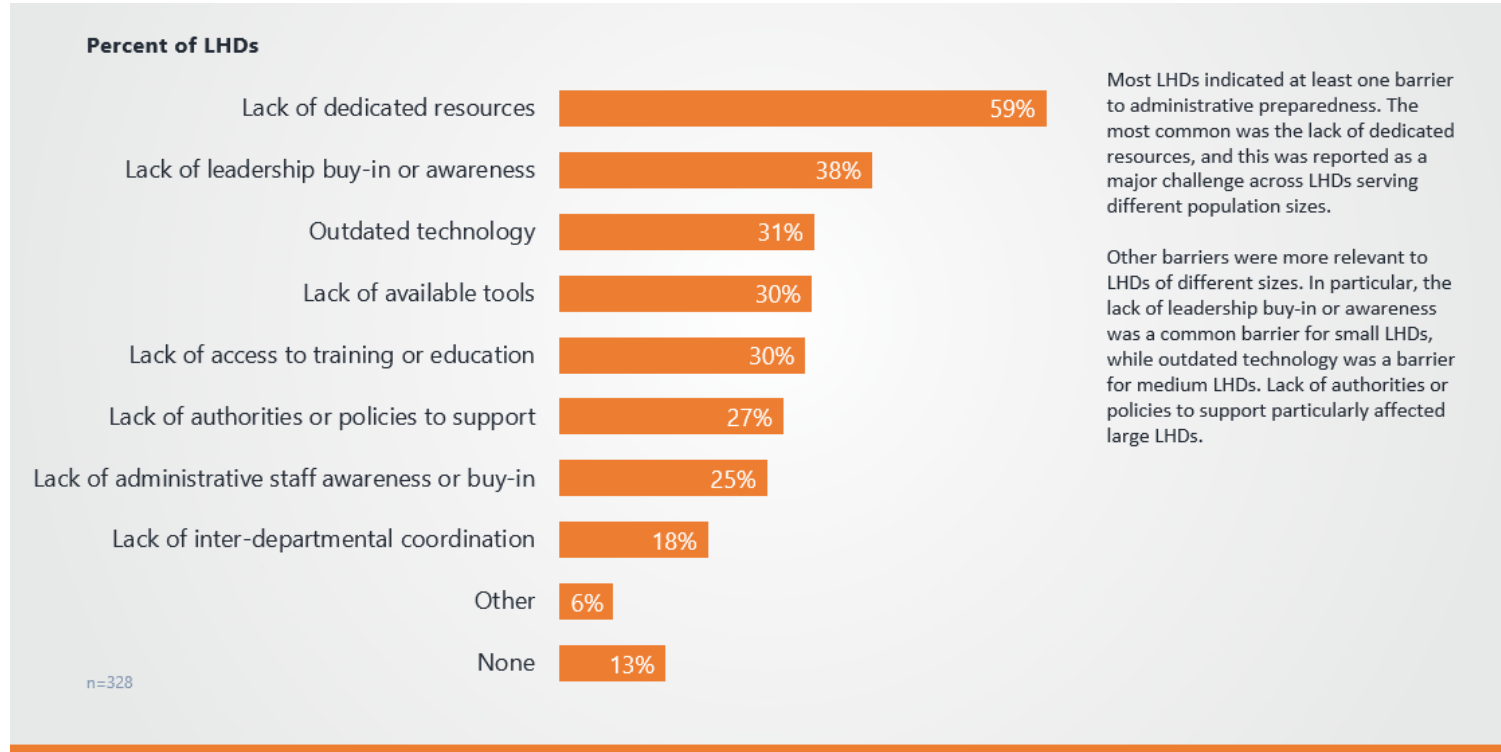
## What is administrative preparedness?

“Ensuring that fiscal and administrative authorities and practices that govern funding, procurement, contracting, hiring, and legal capabilities necessary to mitigate, respond to, and recover from public health emergencies can be accelerated, modified, streamlined, and accountably managed through all levels of government.”

- *National Association of City and County Health Officials*

# Reported barriers to administrative preparedness

## NACCHO 2022 Preparedness Profile Study



# Legal protections for emergency responders

- What's the issue?
  - Liability
  - Workers' compensation and other benefits
  - Scopes of practice
  - Reciprocity
- Who are the responders?
  - Government employees
  - Contractors
  - Volunteers
- Protections depend on mechanism!



# Disease investigation and reporting

- To protect the public's health, information is needed for preventing or controlling disease, injury, or disability
  - Examples
    - Reporting of a disease or injury
    - Reporting births or deaths
    - Conducting public health surveillance, investigations, or interventions
- Public health authorities may be legally authorized to receive such public health information from a variety of sources



# Privacy laws

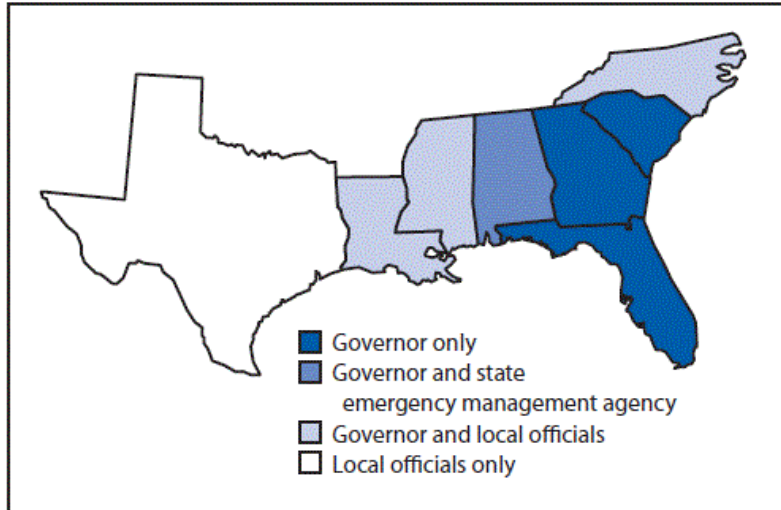
- Privacy laws can dictate—
  - What exact information can be shared with public health authorities
  - When information can be shared with other government entities
  - Which government employees (or agents of the government) are allowed to access information
  - What information is subject to or exempt from public records requests
- However, there are instances where sharing personal information is essential to **protecting the public's health and well-being**
  - Specific carve-outs provide **exceptions** to privacy protections for certain activities such as—
    - Public health
    - Disaster response
    - Law enforcement



# Evacuation powers

- All states have evacuation laws, but they vary greatly
  - See, for example, findings from “Hurricane Evacuation Laws in Eight Southern U.S. Coastal States — December 2018,” MMWR, 2020;69: 1233–1237

## Authority to order large-scale evacuation



## Laws addressing access and functional needs

	AL	FL	GA	LA	MS	NC	SC	TX
Inform persons with access and functional needs of <u>evacuation plans</u>	N	Y	N	Y	N	N	N	Y
Inform persons with disability or access and functional needs of an <u>order to evacuate</u>	N	Y	N	Y	N	N	N	N
Create a <u>persons with disability or access and functional needs registry</u> for evacuation and sheltering	N	Y	N	N	N	N	N	N

**Conclusion**

# What now?

- Think about law! Know how to spot issues during an emergency
- Identify potential legal questions before emergencies
  - Incorporate answers into preparedness policies, plans, trainings, and exercises
- Engage with agency attorneys to stay current on laws that may impact your public health center and response capabilities
  - Responder surge
  - Disease investigations
  - Disease control
  - Emergency procurement
  - Mutual aid

# Q&A



# Questions, comments, or thoughts?

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**Additional resources**

# Updated Emergency Law Inventory

**eli** EMERGENCY LAW INVENTORY

Home U.S. Jurisdictions About More Info ▾

**FIND LAWS →**

## Navigating Disaster Responder Laws Across the United States by Role, State/Territory, and Topic

All laws are current through at least February 2023.

**FIND LAWS →**




<https://eli.temple.edu/>



# Public Health Emergency Law Online Training

Management of public health emergencies requires effective use of legal authorities. In these incidents, public health and emergency management responses must be coordinated under a complex set of federal, state, tribal, and local laws. CDC's Public Health Emergency Law course prepares state, tribal, local, and territorial practitioners to make informed legal decisions related to emergency preparedness and response activities in their jurisdictions.

PHEL consists of three [competency-based](#) units and covers legal issues to consider before, during, and after public health emergencies. Each interactive unit takes about 40 minutes to complete.

- [Unit 1—Introduction to Emergency Management Systems Preparedness and Response](#)   
Covers the legal underpinnings of emergency management systems
- [Unit 2—Emergency Powers: Protection of Persons, Volunteers, and Responders](#)   
Describes legal considerations for personnel responding to emergencies
- [Unit 3—Emergency Powers: Management and Protection of Property and Supplies](#)   
Examines considerations surrounding materials and property during public health emergencies



Ohio National Guard members load drinking water onto a helicopter for delivery to Ocean Springs, Mississippi, after Hurricane Katrina disrupted water supplies along the Mississippi Gulf Coast.


<https://www.cdc.gov/phlp/php/trainingandeducationalresources/public-health-emergency-law-online-training.html>



# Law and Epidemic Emergency Preparedness (LEEP) Online Training

State, tribal, local, and territorial health department staff, emergency planners and managers, first responders, and anyone working in response to an epidemic often face complex legal issues when working to stop the spread of a highly infectious communicable disease.

CDC's free online Law and Epidemic Emergency Preparedness (LEEP) training covers provisions and concepts applicable to epidemic response, including various challenges faced during the 2014 Ebola response, and applies them to future infectious disease emergency response planning. LEEP examines legal underpinnings of emergency preparedness and response systems, what actions are authorized, and how to minimize legal barriers to an effective large-scale communicable disease response.

[Go to LEEP Training](#) 

LEEP consists of eight units. Units 1, 2, and 3 provide participants with a foundation in legal issues surrounding law and epidemic emergency preparedness, and units 4, 5, 6, 7, and 8 cover specific situations you may encounter during an epidemic.



<https://www.cdc.gov/phlp/php/trainingandeducationalresources/training-leep.html>



# Disclaimer

For more information, contact CDC  
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TTY: 1-888-232-6348 [cdc.gov](https://www.cdc.gov)  
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The findings and conclusions in this report are those of the authors and do not necessarily represent the official position of the U. S. Centers for Disease Control and Prevention.

