



Hampton House, Room 580  
624 North Broadway  
Baltimore, Maryland 21205-1996  
(410) 955-7624; (410) 614-9055 fax  
[www.publichealthlaw.net](http://www.publichealthlaw.net)

---

**Public Health Emergency Legal Preparedness Checklist**  
**Civil Legal Liability and Public Health Emergencies**

December 2004

- A. Introduction.** This is one of three checklists prepared by the *Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities (Center)* for voluntary use by county, city, state, and federal public health agencies in assessing their legal preparedness for public health emergencies. In this context, public health emergencies include bioterrorist and other intentional attacks, emerging infectious disease epidemics, natural disasters, and other events with potentially catastrophic impacts on human health.
- B. Background.** State, county, and city public health departments are the front line of the Nation's defense against a wide spectrum of public health emergencies. Following the terrorist attacks of September 11, 2001, and the immediately ensuing anthrax attacks, these agencies have acted decisively to strengthen their public health emergency response capacity. In partnership with the Centers for Disease Control and Prevention (CDC), other federal agencies, and national public health organizations, they have bolstered their disease surveillance and investigation abilities, built new telecommunications and laboratory testing capacity, trained staff in advanced emergency response skills, developed joint operating protocols with emergency management agencies, and taken action on additional, related fronts.

Legal preparedness is an integral part of comprehensive preparedness for public health emergencies. To assess their existing legal preparedness, state health departments have made extensive use of the draft Model State Emergency Health Powers Act, researched and published in December 2001 by the *Center* at the request of CDC.

Ongoing contact with state and local public health agencies indicated they could find additional tools helpful in assessing their public health emergency laws. Following consultation with the Association of State and Territorial Health Officials (ASTHO) and the National Association of County and City Health Officials (NACCHO) in 2003, CDC requested the *Center* to prepare checklists that public health agencies could use, at their own initiative, to assess three especially important components of their legal preparedness as follows:

1. Interjurisdictional legal coordination for public health emergency preparedness;
2. Local public health emergency legal preparedness and response; and
3. Civil legal liability related to public health emergencies.

All three checklists are accessible through the *Center's* website at [www.publichealthlaw.net/Resources/BTlaw.htm](http://www.publichealthlaw.net/Resources/BTlaw.htm). The checklists are in the public domain and may be duplicated and disseminated freely.

- C. Methods.** *Center* faculty researched and developed the checklists through a deliberative process that included legal research and analysis of agencies' functional roles in public health emergencies, review of public health emergency preparedness plans, and communication with public health practitioners and legal counsel. The principal authors are Jason W. Sapsin, JD, MPH, *Center* Scholar ([jsapsin@jhsph.edu](mailto:jsapsin@jhsph.edu)) (interjurisdictional checklist); James G. Hodge, Jr., JD, LLM, *Center* Executive Director ([jhodge@jhsph.edu](mailto:jhodge@jhsph.edu)) (local checklist); and Lance A. Gable, JD, MPH, *Center* Senior Fellow ([gablel@law.georgetown.edu](mailto:gablel@law.georgetown.edu)) (liability checklist.)

The checklists are offered as tools to facilitate review of public health agencies' practical public health legal preparedness. While intended to cover many aspects of the three selected focal areas, users may tailor the checklists to their own priorities and objectives.

- D. Organization.** The checklists present questions and comments that relate to specific legal aspects of emergency preparedness and response operations. Each checklist document contains two principal sections: (1) A "Quick Reference," that lists the checklist's questions; and (2) the detailed checklist with an introduction to the issues it addresses and explanatory comments or suggestions provided for each question.

These sections are organized according to the four phases of incident management found in the National Response Plan: Prevention, Preparedness, Response, and Recovery. This common framework has been widely adopted by the emergency response and public health communities. Within each phase, questions are further organized into subcategories (e.g., Property, People, Data Sharing, Responders, and Private-Sector Entities) that differ in each checklist according to the subject matter. The local public health emergency preparedness checklist includes cross-references to provisions of the draft Model State Emergency Health Powers Act. Each checklist also includes endnotes with references to publications, laws, judicial rulings, and other sources.

- E. Suggestions for Use.** The checklists are designed for self-initiated use by public health officials, their legal counsel, and their public- and private-sector partners. The *Center* suggests that users view the checklists as guides to reviewing the key legal issues within each topical area. Review is likely to lead to additional questions within specific agencies and jurisdictions. The value of the checklists may be enhanced through a collaborative review process that involves a team or committee whose members represent the multiple operational and legal perspectives critical to effective emergency preparedness and response. This approach could have the additional benefit of stimulating enduring partnerships and mutual understanding of the legal framework for emergency response.
- F. Disclaimer.** The *Center* offers the checklists merely as aids to review and analysis of legal issues related to public health emergency preparedness and response. The checklists are not, and should not be used as, legal advice. Public health agencies should consult their legal counsel for legal advice. The CDC Public Health Law Program provided financial support for the *Center's* research and

development of the checklists under CDC cooperative agreement U50/CCU323385. ASTHO and NACCHO staff reviewed and commented on drafts of the checklists. The checklists, however, do not necessarily represent the official views of CDC, ASTHO, or NACCHO or members of these entities.

**G. For More Information.** More information about the three checklists and other resources related to public health’s legal preparedness for public health emergencies are available from the *Center* ([www.publichealthlaw.net](http://www.publichealthlaw.net)), ASTHO ([www.astho.org](http://www.astho.org)), NACCHO ([www.naccho.org](http://www.naccho.org)) and the CDC Public Health Law Program ([www.phppo.cdc.gov/od/phlp](http://www.phppo.cdc.gov/od/phlp)). All four organizations welcome requests for information and feedback on the checklists and their application. For additional information about the checklists, please contact the specific authors noted in C., above, or James G. Hodge, Jr., J.D., LL.M., Executive Director, *Center for Law and the Public’s Health* at [jhodge@jhsph.edu](mailto:jhodge@jhsph.edu); or Anthony Moulton, Ph.D., Co-Director, CDC Public Health Law Program at [adm6@cdc.gov](mailto:adm6@cdc.gov).

### Quick Reference:

#### Civil Legal Liability and Public Health Emergencies

Subject Category	Checklist Question	ö
<b>I. Prevention</b>		
A. Responders	1. Do public health agencies, responders, and private sector entities face potential civil liability for failure to conduct surveillance to identify potential agents or outbreaks that may lead to a public health emergency?	
	2. Do public health agencies, responders, and private sector entities face potential liability for failure to take adequate precautionary measures to avert a public health emergency?	
B. Data Management	3. Do public health agencies, responders, and private sector entities face potential civil liability for failure to share information related to potential public health emergencies with public health officials in other jurisdictions?	
C. Cross-cutting	4. Does federal, state, or local law provide any immunity, protection against civil liability, or indemnification for the actions of public health agencies, responders, and private sector entities for the provision of public health services when a public health emergency has not been declared?	
<b>II. Preparedness</b>		
A. Physical Resources	5. Are there any steps that can be taken prior to an emergency by public health agencies, responders, and private sector entities to reduce liability related to uses of property during an emergency?	
	6. Do public health agencies, responders, and private sector entities face potential liability for failure to adequately plan for uses and destruction of property during an emergency?	
B. Responders	7. Do public health agencies, responders, and private sector entities face potential liability for failure to develop and implement public health emergency training exercises?	
C. Data Management	8. Do public health agencies, responders, and private sector entities face potential liability for failure to provide adequate information or providing false information to the public regarding a potential public health emergency?	
D. Cross-cutting	9. Has the state or local government entered any <i>intrastate</i> mutual aid agreements that address civil liability?	

Subject Category	Checklist Question	Ö
	10. Has the state or local government entered any <i>interstate</i> mutual aid agreements that address civil liability?	
	11. Are civil liability protections explicit in the state or local public health emergency statutes or regulations?	
	12. Are civil liability protections explicit in the state or local statutes or regulations other than public health emergency statutes or regulations?	
	13. Does the state have a tort claims act that abrogates sovereign immunity in some circumstances?	
	14. Does the state have a tort claims act that provides civil liability protection for “discretionary acts” by public health agencies, responders, and private sector entities?	
	15. Do the laws affecting civil liability define relevant terms related to public health?	
<b>III. Response</b>		
A. Physical Resources	16. What civil liability may stem from the actions public health agencies, responders, and private sector entities related to the distribution of (or failure to distribute) limited physical resources (e.g., vaccines, treatment, quarantine or isolation placement) during an emergency?	
B. Facilities	17. What civil liability may stem from the actions of public health agencies, responders, and private sector entities in the seizure or destruction of property during an emergency?	
	19. Do civil liability protections differ for property owners who allow voluntary and non-compensated uses of their property as contrasted with government-compelled property uses?	
C. Responders	20. What civil liability may stem from the actions of responders related to public health activities during a public health emergency?	
	21. What civil liability may stem from the actions of responders related to medical care or treatment during a public health emergency?	
	22. What civil liability may stem from the actions responders related to quarantine or isolation during a public health emergency?	
	23. What civil liability may stem from the actions of responders related to discrimination against individuals or groups during a public health emergency?	
	24. Does federal, state, or local law provide any immunity, protection against liability, or indemnification for the actions of responders for the provision of public health services, medical care, or treatment during a declared public health emergency?	
	25. Does governmental sovereign immunity apply to responders during public health emergency situations with respect to civil liability?	
	26. Do indemnity provisions apply to responders during public health emergency situations with respect to civil liability?	
	27. Do statutes, regulations, or case law extend civil liability protections to responders based upon their title or affiliation (e.g., “emergency responders,” “state officials or employees,” “volunteers,” “practitioners licensed by the state”)?	
	28. Do statutes, regulations, or case law extend civil liability protections to responders based upon their actions or activities during an emergency (e.g., “persons providing public health services,” “persons assisting with emergency response”)?	
	29. Are private health care personnel who act as responders during a public health emergency protected from civil liability?	
	30. Are government contractors who support public health responses as partners to the public health agency protected from civil liability?	
	31. Are volunteers who are supporting public health responses protected from civil liability?	
	32. Do state and local civil liability protections apply to out-of-state responders that have received credentialing or a license waiver from the state?	

Subject Category	Checklist Question	Ö
	33. Do civil liability protections apply to out-of-state responders that have not received credentialing or a license waiver from the state?	
	34. What specific types of activity involving people would be protected from civil liability?	
	35. Are there any Good Samaritan laws that may affect the civil liability of responders during public health emergencies?	
D. Public Health Agencies	36. Are public health agencies that employ or coordinate the activities of emergency responders protected from civil liability for the acts of these emergency responders?	
	37. What civil liability may stem from the actions of public health agencies related to public health activities, medical care, or treatment during a public health emergency?	
	38. What civil liability may stem from the actions of public health agencies related to quarantine and isolation during a public health emergency?	
	39. What civil liability may stem from the actions of public health agencies, related to discrimination against individuals or groups during a public health emergency?	
	40. Does federal, state, or local law provide any immunity, protection against liability, or indemnification for the actions of public health agencies for the provision of public health services, medical care, or treatment during a declared public health emergency?	
	41. Are there any Good Samaritan laws that may affect the liability of public health agencies during public health emergencies?	
E. Private Sector Entities	42. Are private sector entities that employ or coordinate the activities of emergency responders protected from liability for the acts of these emergency responders?	
	43. What civil liability may stem from the actions of private sector entities related to public health activities, medical care, or treatment during a public health emergency?	
	44. What civil liability may stem from the actions of public health agencies, responders, and private sector entities related to quarantine or isolation during a public health emergency?	
	45. What civil liability may stem from the actions of private sector entities related to discrimination against individuals or groups during a public health emergency?	
	46. Does federal, state, or local law provide any immunity, protection against liability, or indemnification for the actions of private sector entities for the provision of public health services, medical care, or treatment during a declared public health emergency?	
	47. Are there any Good Samaritan laws that may affect the liability of private sector entities during public health emergencies?	
F. Data Management	48. Do public health agencies, responders, and private sector entities face potential civil liability for failure to provide adequate information or providing false information to the public regarding a public health emergency?	
	49. What civil liability may stem from the actions of public health agencies, responders, and private sector entities related to the use or disclosure of confidential health information during a public health emergency?	
G. Process	50. Do public health agencies, responders, and private sector entities face potential civil liability for failure to adequately respond to a public health emergency resulting in wrongful death, preventable disability or injury, or other negative health consequences during a public health emergency?	
	51. What standards are applied for civil liability protection, immunity, or indemnification?	
	52. Do the levels and standards required for civil liability protection, immunity, and indemnification vary for different individuals, groups, or entities?	
	53. May emergency responders face civil liability from professional licensing board violations, and if so, under what standards?	
H. Cross-cutting	54. What civil liability may stem from other types of actions of public health agencies, responders, and private sector entities related to people during a public health emergency?	

Subject Category	Checklist Question	Ö
	55. Do statutes or regulations explicitly outline the types of activities that are protected from civil liability?	
	56. What additional types of activity not already addressed would be protected from civil liability during a public health emergency?	
	57. Does federal, state, or local law provide any immunity, protection against civil liability, or indemnification for the actions of public health agencies, responders, and private sector entities in emergency situations other than public health emergencies?	
	58. What are the civil liability protections for the actions of the militia when they are ordered to act during a state of public health emergency?	
<b>IV. Recovery</b>		
	59. Are liability protections only in effect during a declared public health emergency, or do these protections extend to acts and circumstances after the declared public health emergency?	

## **Checklist: Civil Legal Liability and Public Health Emergencies**

**Overview:** One of the most important legal areas of public health emergency preparedness concerns issues of legal liability for public and private sector agencies and their workers/volunteers regarding public health emergency responses. Finding uniformity on these liability issues is nearly impossible because of variances among states. An array of laws address whether liability may apply to specific persons or entities. However, it is helpful to separate these legal themes among the major categories of immunity, liability protection, and indemnification.

As part of a bioterrorism law and policy workshop in December, 2002, *Center* colleagues addressed whether state or local governments are liable for harms to non-recipients when they ration vaccines, drugs, or other medical goods during a public health emergency.<sup>1</sup> We summarized that rationing health care services in an emergency will not subject the state to liability for harms to non-recipients, unless rationing occurs in a discriminatory manner in violation of civil rights protections.

Of course, additional liability issues remain. Public health practitioners desire guidance and clarity in their approach to examining the various legal theories or angles by which their or their agencies' liability may derive. This checklist addresses various liability theories of governmental public health agencies and their officials, workers, and volunteers. Some liability issues addressed in model intrastate mutual aid legislation produced in part through the National Emergency Management Association [NEMA] serve as guides. Additional liability theories or themes relate to the actions of public health authorities and their public and private sector partners before, during, and after a public health emergency.

For the purposes of assessing liability issues, "public health emergency" is summarily defined as stated in the draft Model State Emergency Health Powers Act (MSEHPA) as the "occurrence or imminent threat of a health condition caused by bioterrorism or the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin, and poses a high probability of a large number of deaths, serious long-term disabilities, or significant risk of substantial future harm in the affected population."<sup>2</sup>

This checklist clarifies many of these potential avenues for civil (not criminal) liability, addressing potential theories of liability that may be invoked against public health officials, entities, private sector partners, and volunteers regarding activities, events, or responses to a public health emergency. Some liability issues that relate to interjurisdictional legal issues are addressed in the *Center's* interjurisdictional checklist. Liability theories and supporting principles are briefly discussed below.

**Civil Liability Generally:** Public health agencies or responders (public health practitioners, private sector partners, or volunteers) may face civil liability under a number of legal theories, including negligence, breach of privacy, intentional or negligent infliction of emotional distress, and misrepresentation. In some circumstances, public health agencies and private sector entities (such as hospitals) may be liable for the actions of employees or volunteers working under their supervision.

Of course, liability is not absolute. All states offer some degree of qualified immunity from civil liability to specific persons or entities under certain circumstances. Immunity may arise from several legal sources, including (1) judicial, or common, law; (2) federal and state Tort Claims Acts (*see* questions #13 and #14); (3) volunteer protection statutes (*see* question #31); and (4) so-called “Good Samaritan” provisions (*see* question #35). These immunity protections, if they exist in a particular jurisdiction, will typically apply regardless of whether or not there is a declared public health emergency.<sup>3</sup> There are several additional legal sources that may possibly grant immunity during a declared public health emergency, including (1) public health emergency statutes; (2) general emergency statutes; and (3) mutual aid agreements (*see* questions #9 and #10). The extent of immunity varies according to the applicable state laws, as well as the person or entity implicated. A detailed, systematic review of the immunity laws in each jurisdiction is necessary to determine the application of immunity in these various circumstances. For example, government entities and their partners and agents may receive some civil immunity during responses to natural disasters pursuant to statutes authorizing response to these emergencies.<sup>4</sup>

Governmental immunity. Governmental agencies, such as public health agencies, usually enjoy significant immunity from civil liability derived from the state’s inherent sovereign immunity. In addition to the government agency itself, some jurisdictions extend governmental immunity to responders that are government employees, contractors, or volunteers. Tort Claims Acts (TCAs), found in most states, waive the state’s sovereign immunity in some instances, allowing lawsuits to proceed. The structure and scope of TCAs vary. Some states generally abolish immunity from civil liability, but reserve immunity in specific circumstances.<sup>5</sup> Other states retain immunity in most cases, but list exceptions where liability may attach.<sup>6</sup> The Federal TCA<sup>7</sup> and most state tort claims acts provide discretionary immunity, which grants the government (and sometimes its employees, contractors, and volunteers) immunity from liability for engaging in discretionary functions.<sup>8</sup> Discretionary acts are those acts authorized by statute that give government discretion to take or not take certain actions or to implement or not implement certain programs. Thus, in states that recognize a “discretionary acts” immunity standard, the liability of public health agencies, responders, private sector partners, and volunteers will depend on whether their actions in response to the public health emergency are considered “discretionary acts” in that jurisdiction.

Responder immunity. Responders to public health emergencies (including public health professionals, private sector health professionals, and volunteers) may be immune from civil liability under several types of legal provisions. Responders may be protected from civil liability under the umbrella of governmental immunity if they are deemed to be an employee or agent of the state, their actions are within the scope of employment, and their actions are not performed with gross negligence or willful misconduct. Good Samaritan statutes may provide immunity from civil liability for a person coming to the rescue of another, unless that rescuer commits gross negligence or willful and wanton misconduct. Volunteer protection statutes at the federal and state levels provide immunity for uncompensated volunteers. Responders assisting during a declared emergency may be explicitly immune through liability protections found in public health emergency statutes such as MSEHPA,<sup>9</sup> general emergency statutes,<sup>10</sup> and emergency management assistance compacts.<sup>11</sup> Finally, some states indemnify employees and agents for any civil liability incurred within the scope of employment.

Subject Category	Checklist Question	Commentary
------------------	--------------------	------------

Subject Category	Checklist Question	Commentary
<b>I. Prevention</b>		
A. Responders	1. Do public health agencies, responders, and private sector entities face potential civil liability for failure to conduct surveillance to identify potential agents or outbreaks that may lead to a public health emergency?	The failure of the government to adequately plan for uses and destruction of property during an emergency will not usually expose the government or its agents to civil liability. Planning decisions will likely be considered discretionary, and will therefore usually receive protection from liability under state tort claims acts (TCA). See the general summary of civil liability above for more information. However, if state or local laws require government to engage in this sort of planning, it could face liability for negligently fulfilling this obligation.
	2. Do public health agencies, responders, and private sector entities face potential liability for failure to take adequate precautionary measures to avert a public health emergency?	The analysis under question #1 is relevant to the question of civil liability for failure to take adequate measures to prevent a public health emergency. Such a failure will not likely expose public health agencies, responders, or private sector entities to civil liability. However, public health agencies, responders, or private sector entities required to create emergency plans pursuant to a contract could also face potential damages for breaches of the contract.
B. Data Management	3. Do public health agencies, responders, and private sector entities face potential civil liability for failure to share information related to potential public health emergencies with public health officials in other jurisdictions?	The analysis under question #1 is relevant to the question of civil liability for failure to share information related to potential public health emergencies with other public health officials.
C. Cross-cutting	4. Does federal, state, or local law provide any immunity, protection against civil liability, or indemnification for the actions of public health agencies, responders, and private sector entities for the provision of public health services when a public health emergency has not been declared?	Some degree of governmental immunity from civil liability exists at federal, state, and local levels pursuant to common law and statutes. <sup>12</sup> The extent of this immunity varies according to the person or entity implicated. Immunity for government entities, employees, or agents may generally be found in several legal sources. See the general summary of civil liability above for more information.
<b>II. Preparedness</b>		
A. Physical Resources	5. Are there any steps that can be taken prior to an emergency by public health agencies, responders, and private sector entities to reduce liability related to uses of property during an emergency?	A variety of potential steps may be taken prior to an emergency to reduce liability for uses of property during an emergency. Examples include: 1) registering response sites; 2) entering into contractual agreements that explicitly grant immunity from liability for property uses during an emergency; and 3) clarifying the laws related to liability during public health emergencies. <sup>13</sup> Additionally, proactive planning prior to an emergency may reduce the likelihood of anyone seeking damages based upon the emergency response.

Subject Category	Checklist Question	Commentary
	6. Do public health agencies, responders, and private sector entities face potential liability for failure to adequately plan for uses and destruction of property during an emergency?	The analysis under question #1 is relevant to the question of civil liability for failure to adequately plan for uses and destruction of property during a public health emergency. However, if state or local laws require government to engage in this sort of planning, the government could face liability for negligently fulfilling this obligation.
B. Responders	7. Do public health agencies, responders, and private sector entities face potential liability for failure to develop and implement public health emergency training exercises?	The analysis under question #1 is relevant to the question of civil liability for failure to sufficiently train public health personnel.
C. Data Management	8. Do public health agencies, responders, and private sector entities face potential liability for failure to provide adequate information or providing false information to the public regarding a potential public health emergency?	Most jurisdictions have not imposed an affirmative duty on government or its employees and agents to inform the public about potential emergencies. This function is, however, largely assumed by government as part of its discretionary acts, and liability concerns may follow based on this standard. See the general summary of civil liability above for more information. Providing false information to the public could potentially create liability, since the government has acted affirmatively but done so in a way that could be deemed negligent or misrepresentative.
D. Cross-cutting	9. Has the state or local government entered any <i>intrastate</i> mutual aid agreements that address civil liability?	Most mutual aid agreements contain some sort of civil liability provision that indicates which jurisdiction is responsible for the acts and consequences of persons or entities responding to an emergency. Often liability is shifted to the jurisdiction requesting aid. For example, the National Emergency Management Association’s Model Intrastate Mutual Aid Legislation provides immunity from civil liability for actions involving death and injury of persons and damage of property for all employees or agents of the government requesting aid. For the duration of the emergency, all persons responding under the operational control of the government requesting aid (including those from other jurisdictions) will be considered to be employees or agents of that government and therefore fall within their immunity protection. Exceptions for immunity are made for willful misconduct, gross negligence, or bad faith. <sup>14</sup>
	10. Has the state or local government entered any <i>interstate</i> mutual aid agreements that address civil liability?	Many of the same civil liability issues arise in the context of interstate mutual aid agreements as in intrastate mutual aid agreements as discussed in question #9. The mutual aid agreement will usually indicate whether the jurisdiction providing the assistance or requesting the assistance is responsible for the acts or consequences of the assistance. Protection from civil liability depends on the federal, state, and local immunity provision applicable in the governing jurisdiction. It is very important to assess civil liability provisions in mutual aid agreements as civil liability protections differ significantly from state to state.

Subject Category	Checklist Question	Commentary
	11. Are civil liability protections explicit in the state or local public health emergency statutes or regulations?	Many state and local government have passed public health emergency statutes and regulations, many of them based on the provisions of the MSEHPA. MSEHPA, which has been adopted in part by a majority of states, contains explicit language exempting certain persons or actions from civil liability during a public health emergency. <sup>15</sup> Many states, therefore, authorize public health powers during emergency situations and protect those exercising these powers from civil liability unless they engage in willful misconduct or gross negligence. It is necessary to review and understand statutes or regulations that outline state and local public health powers to assess the level of civil liability protection for public health agencies, responders, and private sector entities.
	12. Are civil liability protections explicit in the state or local statutes or regulations other than public health emergency statutes or regulations?	Besides specific provisions addressing public health emergency powers, other statutes, regulations, and common law may also establish liability protections. A comprehensive understanding of all relevant laws and precedents is needed to evaluate the potential liability during and after a public health emergency.
	13. Does the state have a tort claims act that abrogates sovereign immunity in some circumstances?	Tort claims acts (TCAs) are found in most states. They waive the common law sovereign immunity of the state and its agents who are acting within their official duties. See the general summary of civil liability above for more information on TCAs.
	14. Does the state have a tort claims act that provides civil liability protection for “discretionary acts” by public health agencies, responders, and private sector entities?	The Federal Tort Claims Act <sup>16</sup> and most state tort claims acts provide discretionary immunity, which grants the government immunity from civil liability for performance or non-performance of “discretionary acts”. <sup>17</sup> Discretionary acts are those acts authorized by statute that give government discretion to take or not take certain action or to implement or not implement certain programs. See the general summary of civil liability above for more information regarding discretionary immunity. Some states that have recognized discretionary immunity apply it immunity only to the public health agency and its employees, while other states extend governmental discretionary immunity to contractors and volunteers working on behalf of the government.
	15. Do the laws affecting civil liability define relevant terms related to public health?	Many terms are used to define the parameters of civil liability and immunity. Some of the more relevant terms include: Public health official, Public health practitioner, Public health agency, Private sector partner, Volunteer, Immunity, Indemnification, Emergency responder, and Public health emergency. While some laws define these terms carefully and consistently, most do not. Lack of clarity in these terms can impinge upon interpretations of the scope of immunity. <sup>18</sup>
<b>III. Response</b>		

Subject Category	Checklist Question	Commentary
A. Physical Resources	16. What civil liability may stem from the actions public health agencies, responders, and private sector entities related to the distribution of (or failure to distribute) limited physical resources (e.g., vaccines, treatment, quarantine or isolation placement) during an emergency?	Since decisions made by public health agencies or their employees or agents during an emergency related to control of physical resources and other property are a) likely authorized by statute; and b) usually involve the exercise of discretionary decisions (i.e., the government is not required to take a predetermined action), these decisions will likely fall within the protection of discretionary immunity under the state torts claims acts, so long as these decisions are not made in a discriminatory manner. The U.S. Supreme Court has found that there is no affirmative right to government aid, even if the population relies on these services. <sup>19</sup> Public health officials should be careful not to act outside the scope of the discretionary exception in a particular jurisdiction. Negligent actions that are not discretionary may subject agent to civil liability.
B. Facilities	17. What civil liability may stem from the actions of public health agencies, responders, and private sector entities in the seizure or destruction of property during an emergency?	Public health agencies, responders, and private sector entities could face civil liability for the seizure and destruction of property under certain circumstances. Potential theories of civil liability could include trespass to land or negligent infliction of economic loss. Constitutional takings law requires the government to compensate property owners for seizing their property under some circumstances. <sup>20</sup> This requirement is not subject to sovereign immunity. However, property seized or destroyed pursuant to nuisance abatement laws may not require compensation. Some emergency response statutes specifically exempt from liability those actions involving seizure and destruction of property during an emergency. <sup>21</sup>
	19. Do civil liability protections differ for property owners who allow voluntary and non-compensated uses of their property as contrasted with government-compelled property uses?	Some jurisdictions have included specific language in their emergency health powers statutes to grant immunity from liability to property owners who allow their property to be used voluntarily and without compensation. <sup>22</sup>
C. Responders	20. What civil liability may stem from the actions of responders related to public health activities during a public health emergency?	Responders may face civil liability for negligence if they fail to use reasonable care in the provision of public health services. Other theories of civil liability, such as breach of privacy, intentional or negligent infliction of emotional distress, or misrepresentation, could be implicated as well. Information regarding immunity protections for responders from civil liability is discussed in question # 24.
	21. What civil liability may stem from the actions of responders related to medical care or treatment during a public health emergency?	Responders may face civil liability for negligence or medical malpractice for injuries or expenses incurred due to the administration of medical care and treatment during an emergency. In jurisdictions where responders are granted qualified governmental immunity, immunity may depend upon whether the official had a good faith justification or reasonable basis for the action. <sup>23</sup> For example, courts have upheld sovereign immunity under the discretionary exception to the Federal Tort Claims Act for failures to provide adequate medical care, finding that the failures were policy decisions based on allocating limited resources. <sup>24</sup>

Subject Category	Checklist Question	Commentary
	22. What civil liability may stem from the actions responders related to quarantine or isolation during a public health emergency?	Responders may face civil liability for negligence, false imprisonment, and intentional infliction of emotional distress, among others if quarantine and isolation are improperly utilized during a public health emergency. Additionally, challenges to quarantine and isolation based upon due process principles in federal and state constitutions may override sovereign immunity.
	23. What civil liability may stem from the actions of responders related to discrimination against individuals or groups during a public health emergency?	Responders may face civil liability for civil rights violations if they engage in discrimination during a public health emergency. Civil rights actions may be brought against responders who have acted in a way that violates constitutional rights. If the act was that of an employee, official, or volunteer outside the scope of their employment or agency, then the responder could be held personally liable for the violation. <sup>25</sup>
	24. Does federal, state, or local law provide any immunity, protection against liability, or indemnification for the actions of responders for the provision of public health services, medical care, or treatment during a declared public health emergency?	The general legal sources of immunity addressed in introductory section above may apply to responders during emergency situations. As discussed in question # 16, decisions made by a public health agencies during an emergency related to the provision of public health services are will likely fall within the protection of discretionary immunity. Some state laws offer responders immunity from civil liability for actions performed during an emergency, provided that the actions are within the scope of employment and are not performed with gross negligence or willful misconduct. Other states may indemnify responders for actions that subject them to civil liability. Public health emergency statutes may set forth explicit liability protections for public health activities (e.g., surveillance, vaccination, quarantine) conducted during a declared public health emergency. <sup>26</sup>
	25. Does governmental sovereign immunity apply to responders during public health emergency situations with respect to civil liability?	The broad sovereign immunity of the government described above in the general liability discussion may or may not apply to responders. Responders that are considered to be employees, officers, and agents of the government are often granted liability protection for acts committed in the scope of their public employment. Officers, employees, or agents of the government often have qualified immunity for discretionary acts, but not for ministerial acts. Discretionary immunity may be lost if the employee acts with bad faith, wanton misconduct, malice, or with corruption.
	26. Do indemnity provisions apply to responders during public health emergency situations with respect to civil liability?	Some jurisdictions, by contrast, allow employees to be held liable for harms caused in the scope of their employment, but the state is required to defend or indemnify the employee. This distinction is important. Immunity prevents the victim from collecting on a claim, while indemnity allows for collection if the claim is successful. <sup>27</sup>
	27. Do statutes, regulations, or case law extend civil liability protections to responders based upon their title or affiliation (e.g., “emergency responders,” “state officials or employees,” “volunteers,” “practitioners licensed by the state”)?	Some laws grant differing levels of liability protection for different persons responding to an emergency. Not only is it important to understand these distinctions, it is crucial to understand the scope and interpretation of the terms used to define these categories.

Subject Category	Checklist Question	Commentary
	28. Do statutes, regulations, or case law extend civil liability protections to responders based upon their actions or activities during an emergency (e.g., “persons providing public health services,” “persons assisting with emergency response”)?	Some laws base liability protection on the actions or activities being performed by emergency responders. MSEHPA, for example, grants immunity to any person “who renders assistance or advice at the request of the State” during a public health emergency. <sup>28</sup> This is a broad standard that encompasses most activities conducted by responders assisting the state. State and local laws vary considerably, so it is important to assess the scope of immunity under law.
	29. Are private health care personnel who act as responders during a public health emergency protected from civil liability?	Some jurisdictions will consider private health care personnel assisting during a public health emergency to be government employees of the responding jurisdiction, government contractors, or volunteers. These responders will receive the same level of civil liability protections as other government employees, government contractors, or volunteers for the duration of the public health emergency. <i>See</i> questions # 30 and # 31 for more information.
	30. Are government contractors who support public health responses as partners to the public health agency protected from civil liability?	Government contractors receive immunity under the laws of some jurisdictions. Sometimes the applicability of immunity will depend on whether the contractor is in compliance with preset specifications. Other jurisdictions do not provide contractors with immunity from civil liability even though they have taken over state functions. <sup>29</sup>
	31. Are volunteers who are supporting public health responses protected from civil liability?	Volunteers are often protected from civil liability in two ways: 1) under specific federal and state laws that extend immunity to volunteers; or 2) as employees/agents of the public health agency coordinating the emergency response. The federal Volunteer Protection Act (VPA) and similar state provisions seek to limit the civil liability of volunteers serving not-for-profit organizations and governmental entities. To receive immunity under the VPA, the volunteer must be acting within the scope of the volunteer's responsibilities; be properly licensed, certified, or authorized by the appropriate authorities as required by law in the state in which the harm occurred; and the harm cannot be caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer. <sup>30</sup> Another alternative adopted by some states is to consider volunteers as employees of the state for purposes of public health emergency response, granting them the same immunities that employees have under law in that jurisdiction. <sup>31</sup>
	32. Do state and local civil liability protections apply to out-of-state responders that have received credentialing or a license waiver from the state?	The answer to this question varies from state to state. Some state emergency health powers laws explicitly allow for the waiver of credentialing and licensure requirements during a public health emergency. Other states have not addressed this issue. Broadly worded immunity provisions may apply to responders regardless of their licensure status.
	33. Do civil liability protections apply to out-of-state responders that have not received credentialing or a license waiver from the state?	The answer to this question varies from state to state. <i>See</i> question # 32.

Subject Category	Checklist Question	Commentary
	34. What specific types of activity involving people would be protected from civil liability?	Laws may or may not indicate specific activities that are protected from civil liability. However, statutes that provide blanket immunity for acts conducted pursuant to emergency health powers may indirectly grant immunity for all public health activities authorized in the emergency health powers statute. <sup>32</sup> These activities may include provision or imposition of medical care; quarantine and isolation; vaccination; surveillance and testing; imposition of curfews or travel restrictions; and disclosures of confidential information.
	35. Are there any Good Samaritan laws that may affect the civil liability of responders during public health emergencies?	Good Samaritan statutes are found in most states. They provide immunity from civil liability for a person coming to the rescue of another, unless that rescuer commits gross negligence or willful and wanton misconduct. At common law, assisting an injured person with no duty to do so could subject a person to civil liability if he failed to exercise reasonable care in the rescue. Good Samaritan statutes do not apply to persons who have a pre-existing duty to provide aid. <sup>33</sup>
D. Public Health Agencies	36. Are public health agencies that employ or coordinate the activities of emergency responders protected from civil liability for the acts of these emergency responders?	Government entities that coordinate public health emergency response (e.g., state or local public health departments) are considered a subdivision of the government and subject to all liabilities or immunities applicable to the government. See the general discussion of liability above for more information. Public health agencies can be liable for the actions of responders if these actions are within the scope of their employment or duty to the agency under the theories of agency, respondeat superior, or vicarious liability. In some states, agencies may be obligated to indemnify responders for acts occurring under the supervision of the public health agencies during a public health emergency.
	37. What civil liability may stem from the actions of public health agencies related to public health activities, medical care, or treatment during a public health emergency?	Public health agencies may face civil liability for the acts of responders under its supervision. <i>See</i> question #36. The same theories of liability for the provision of public health services that apply to responders may apply to public health agencies. <i>See</i> questions #20 and # 21.
	38. What civil liability may stem from the actions of public health agencies related to quarantine and isolation during a public health emergency?	Public health agencies may face liability for negligence, false imprisonment, and intentional infliction of emotional distress, among others if quarantine and isolation are improperly utilized during a public health emergency. <i>See</i> question #22. Depending on how extensively quarantine and isolation restrict the liberty of those targeted, the state may have additional obligations. When the government confines individuals, courts have found there to be a special relationship that requires the government to protect those confined from serious harm. <sup>34</sup> Failures to do so may result in additional liability.
	39. What civil liability may stem from the actions of public health agencies, related to discrimination against individuals or groups during a public health emergency?	Public health agencies may face liability for civil rights violations if they engage in discrimination during a public health emergency. Civil rights actions brought against officials or employees of the agency may subject the agency to liability if the violation was due to a policy, custom, or official decision. <sup>35</sup>

Subject Category	Checklist Question	Commentary
	40. Does federal, state, or local law provide any immunity, protection against civil liability, or indemnification for the actions of public health agencies for the provision of public health services, medical care, or treatment during a declared public health emergency?	The general legal sources of immunity addressed in introductory section above may apply to public health agencies during emergency situations. As discussed in question #16, decisions made by a public health agencies during an emergency related to the provision of public health services are will likely fall within the protection of discretionary immunity. Additionally, some states may indemnify responders for actions that subject them to civil liability. Public health emergency statutes may set forth explicit civil liability protections for public health activities (e.g., surveillance, vaccination, quarantine) conducted during a declared public health emergency. <sup>36</sup> See question #24.
	41. Are there any Good Samaritan laws that may affect the civil liability of public health agencies during public health emergencies?	Good Samaritan only provide immunity from civil liability for responders. Public health agencies do not receive any immunity from these provisions.
E. Private Sector Entities	42. Are private sector entities that employ or coordinate the activities of emergency responders protected from liability for the acts of these emergency responders?	Private sector entities may be liable for the negligent acts of responders under their supervision. Theories of agency, respondeat superior, or vicarious liability often impute the actions of an employee on the employer. Vicarious liability may apply even the responder has received immunity for their actions under an emergency statute. Private entities that have contracted with the government to employ or coordinate a public health emergency response may or may not be liable for harms caused by employees. However, state laws are split with regard to the immunity of government contractors. See question #30.
	43. What civil liability may stem from the actions of private sector entities related to public health activities, medical care, or treatment during a public health emergency?	Private sector entities may face civil liability for the acts of responders under its supervision. See question #36. The same theories of liability for the provision of public health services that apply to responders may apply to private sector entities. See question #20.
	44. What civil liability may stem from the actions of public health agencies, responders, and private sector entities related to quarantine or isolation during a public health emergency?	Private sector entities may face similar liability for quarantine and isolation as public health agencies. See question #38.
	45. What civil liability may stem from the actions of private sector entities related to discrimination against individuals or groups during a public health emergency?	Private sector entities may face similar liability for discrimination as public health agencies. See question #39.

Subject Category	Checklist Question	Commentary
	46. Does federal, state, or local law provide any immunity, protection against civil liability, or indemnification for the actions of private sector entities for the provision of public health services, medical care, or treatment during a declared public health emergency?	The general legal sources of immunity addressed in introductory section above may apply to private sector entities during emergency situations. However, unless private sector entities have been conferred sovereign immunity as a government contractor, they will have considerably less civil liability protection than responders and public health agencies. Public health emergency statutes may set forth explicit civil liability protections for public health activities (e.g., surveillance, vaccination, quarantine) conducted during a declared public health emergency that apply to the actions of private sector entities. <sup>37</sup> See questions #24 and #40.
	47. Are there any Good Samaritan laws that may affect the civil liability of private sector entities during public health emergencies?	Good Samaritan only provide immunity from civil liability for responders. Public health agencies do not receive any immunity from these provisions.
F. Data Management	48. Do public health agencies, responders, and private sector entities face potential civil liability for failure to provide adequate information or providing false information to the public regarding a public health emergency?	As discussed in question #8, failure to provide adequate information to the public is likely to be viewed as discretionary (and result in immunity from tort liability where the discretionary act standard applies), while providing false information to the public could potentially result in civil liability, from theories of negligence or misrepresentation.
	49. What civil liability may stem from the actions of public health agencies, responders, and private sector entities related to the use or disclosure of confidential health information during a public health emergency?	Public health agencies, responders, and private sector entities may face civil liability for negligence, intentional or negligent infliction of emotional distress, or breach of privacy if confidential health information is inappropriately disclosed during a public health emergency, although many public health emergency statutes permit sharing of such data during emergencies. <sup>38</sup>
G. Process	50. Do public health agencies, responders, and private sector entities face potential civil liability for failure to adequately respond to a public health emergency resulting in wrongful death, preventable disability or injury, or other negative health consequences during a public health emergency?	Although jurisdictions may differ, public health agencies, responders, and private sector entities are not likely to be held liable for failure to respond. For example, courts have upheld sovereign immunity under the discretionary exception to the Federal Tort Claims Act for failures to provide adequate medical care, finding that the failures were policy decisions based on allocating limited resources. <sup>39</sup> The fact that employees and agents may not be immune in some jurisdictions, however, leaves open the possibility of civil liability.

Subject Category	Checklist Question	Commentary
	51. What standards are applied for civil liability protection, immunity, or indemnification?	Laws, regulations, and judicial decisions will sometimes require that entities or persons must meet a particular standard of care to retain protection from civil liability. Most often, the relevant standard is “reasonable care”—a person acting with reasonable care in responding to an emergency will receive immunity from civil liability. Another common standard of care requires a person to act in “good faith.” A person or entity may lose their immunity protection if they fail to meet their standard of care or act with gross negligence or willful misconduct. Emergency responders and government planners should be able to identify the applicable standard of care.
	52. Do the levels and standards required for civil liability protection, immunity, and indemnification vary for different individuals, groups, or entities?	Some provisions may differ on the level of immunity granted to different persons or groups. For example, physicians may be held to a higher standard of care than a lay volunteer based upon the physician’s expertise. <i>See</i> question #35 for further explanation.
	53. May emergency responders face civil liability from professional licensing board violations, and if so, under what standards?	<i>See</i> question #32 for further explanation.
H. Cross-cutting	54. What civil liability may stem from other types of actions of public health agencies, responders, and private sector entities related to people during a public health emergency?	Public health agencies, responders, and private sector entities may face civil liability for other actions taken during a public health emergency as well. As these issues arise, they should be evaluated with the assistance of the information provided elsewhere in this checklist and with the assistance of legal counsel.
	55. Do statutes or regulations explicitly outline the types of activities that are protected from civil liability?	While some laws have an explicit list of activities shielded from civil liability, many do not, instead opting for more ambiguous tests (e.g., was the act a discretionary act?). <i>See</i> question #14. Where statutes and regulations are not explicit, court decisions may supplement immunity provisions.
	56. What additional types of activity not already addressed would be protected from civil liability during a public health emergency?	There may be other activities conducted as a part of the emergency response not specifically addressed above that could subject public health agencies, responders, and private sector entities to civil liability (e.g., failure to appropriately dispose of infectious waste and human remains). Information provided in the other sections of this checklist should provide useful guidance to these other civil liability issues as they arise.
	57. Does federal, state, or local law provide any immunity, protection against civil liability, or indemnification for the actions of public health agencies, responders, and private sector entities in emergency situations other than public health emergencies?	Additional civil liability protection may attach during other types of emergency situations. For example, government entities and their partners and agents may receive some tort immunity during responses to natural disasters pursuant to statutes authorizing response to these emergencies. <sup>40</sup>

Subject Category	Checklist Question	Commentary
	58. What are the civil liability protections for the actions of the militia when they are ordered to act during a state of public health emergency?	The civil liability and immunity provisions of the jurisdiction will determine the answer to this question. The answer may depend on whether the members of the militia are considered employees or agents that come within immunity provisions and whether they are performing acts that qualify for immunity or are within the broad delegation of authority provided pursuant to the Governor's order. <sup>41</sup>
<b>IV. Recovery</b>		
	59. Are civil liability protections only in effect during a declared public health emergency, or do these protections extend to acts and circumstances after the declared public health emergency?	In states that have statutory or administrative provisions for declaring a public health emergency, civil liability protections typically cover actions and effects resulting from the exercise of emergency health powers. It is vital to examine these provisions carefully to determine whether civil liability protection automatically exists once an emergency is declared and whether civil liability protection extends to actions occurring in preparation for, and in the aftermath of, a public health emergency.

## References:

<sup>1</sup> Available online at <http://www.publichealthlaw.net/Resources/BTlaw.htm>

<sup>2</sup> See *Center for Law and the Public's Health*, Model State Emergency Health Powers Act (MSEHPA), Section 104(m) [available at [www.publichealthlaw.net/Resources/Modellaws.htm](http://www.publichealthlaw.net/Resources/Modellaws.htm)].

<sup>3</sup> DAN B. DOBBS, *THE LAW OF TORTS* 720-23 (2000).

<sup>4</sup> See, e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by Public Law 106-390, October 30, 2000, § 5148 (non-liability of federal government).

<sup>5</sup> See, e.g., ALASKA STATS. § 09.50.250; GA. CODE § 50-21-23.

<sup>6</sup> See, e.g., COLO. REV. STATS ANN. § 24-10-106; TEX. CIV. PRAC. & REM. CODE § 101.021.

<sup>7</sup> 28 U.S.C.A. § 2875.

<sup>8</sup> DAN B. DOBBS, *THE LAW OF TORTS* 698 (2000).

<sup>9</sup> See, e.g., Model State Emergency Health Powers Act, § 804(a).

<sup>10</sup> See National Emergency Management Association, Model Intrastate Mutual Aid Legislation, Art. X (2004).

<sup>11</sup> See Emergency Management Assistance Compact, available at <http://www.emacweb.org/>.

<sup>12</sup> DAN B. DOBBS, *THE LAW OF TORTS* 720-23 (2000).

<sup>13</sup> Faculty at the *Center for Law and the Public's Health* have drafted two model laws that address these issues in great detail. The Model State Emergency Health Powers Act (MSEHPA) and the Turning Point Model State Public Health Act (Turning Point) are available at our website at [www.publichealthlaw.net/Resources/Modellaws.htm](http://www.publichealthlaw.net/Resources/Modellaws.htm)

<sup>14</sup> See National Emergency Management Association, Model Intrastate Mutual Aid Legislation, Art. X (2004).

<sup>15</sup> See, e.g., Model State Emergency Health Powers Act, § 804.

<sup>16</sup> 28 U.S.C.A. § 2875.

<sup>17</sup> DAN B. DOBBS, *THE LAW OF TORTS* 698 (2000).

<sup>18</sup> Sample definitions for some of these terms may be found in the Model Acts available at [www.publichealthlaw.net/Resources/Modellaws.htm](http://www.publichealthlaw.net/Resources/Modellaws.htm)

<sup>19</sup> *DeShaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189, 196 (1989).

<sup>20</sup> See *Lucas v. South Carolina Coastal Conference*, 505 U.S. 1003 (1992).

<sup>21</sup> See MSEHPA, § 804.

<sup>22</sup> See, e.g., Turning Point Model State Public Health Act § 6-105(a); MSEHPA § 804(b)(1).

<sup>23</sup> PROSSER, WADE et al., *CASES AND MATERIALS ON TORTS* (9<sup>th</sup> ed.), 621-22, 636 (1994).

<sup>24</sup> See, e.g., *C.R.S. by D.B.S. v. United States*, 11 F.3d 791 (8<sup>th</sup> Cir. 1993); *Fang v. United States*, 140 F.3d 1238 (9<sup>th</sup> Cir. 1998); *Fullmer v. United States*, 34 F.Supp.2d 1325 (D. Utah 1997). See generally Elizabeth

---

Williams, Claims Arising From Conduct of Governmental Employee in Administering or Failing to Administer Medical Care as Within Discretionary Function Exception of Federal Tort Claims Act, 172 A.L.R. Fed. 407 (2001).

<sup>25</sup> Dobbs, at 745.

<sup>26</sup> See, e.g., Model State Emergency Health Powers Act, § 804(a).

<sup>27</sup> Dobbs, at 732-33.

<sup>28</sup> See, e.g., MSEHPA § 804(b)(3).

<sup>29</sup> Dobbs, at 737-41.

<sup>30</sup> P.L. 105-19 (1997).

<sup>31</sup> See National Emergency Management Association, Model Intrastate Mutual Aid Legislation, Art. X (2004).

<sup>32</sup> See, e.g., MSEHPA § 804.

<sup>33</sup> Good Samaritan Statutes, 68 ALR4th 294.

<sup>34</sup> Dobbs, at 884.

<sup>35</sup> Dobbs, at 745.

<sup>36</sup> See, e.g., Model State Emergency Health Powers Act, § 804(a).

<sup>37</sup> See, e.g., Model State Emergency Health Powers Act, § 804(a).

<sup>38</sup> James G. Hodge, Jr., Erin Fuse Brown, and Jessica P. O'Connell, *The HIPAA Privacy Rule and Bioterrorism Prevention, Planning, and Response*, 2:2 BIOSECURITY AND BIOTERRORISM 73 (2004).

<sup>39</sup> See, e.g., C.R.S. by D.B.S. v. United States, 11 F.3d 791 (8<sup>th</sup> Cir. 1993); Fang v. United States, 140 F.3d 1238 (9<sup>th</sup> Cir. 1998); Fullmer v. United States, 34 F.Supp.2d 1325 (D. Utah 1997). See generally Elizabeth Williams, Claims Arising From Conduct of Governmental Employee in Administering or Failing to Administer Medical Care as Within Discretionary Function Exception of Federal Tort Claims Act, 172 A.L.R. Fed. 407 (2001).

<sup>40</sup> See, e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by Public Law 106-390, October 30, 2000, § 5148 (non-liability of federal government).

<sup>41</sup> See Turning Point Model State Public Health Act §6-102[g] (authorizing the use of the militia to enforce public health powers under certain circumstances).