

## SLIDE 14                    TYPES OF STATE/LOCAL PUBLIC HEALTH LAWS

### Traditional Broad “Police Powers”

- **Federal Constitution:** police power is the capacity of the state to regulate behavior and enforce order within its territory to promote the general welfare, health, safety, and (sometimes) morals of the inhabitants, 10th Amendment.

### Disease-Specific Control Laws—Mandatory Reporting Required for notifiable conditions ([Texas Administrative Code Title 25, Part 1, Chapter 97](#)):

- ***Sexually Transmissible Diseases (STDs)***. Title 25, Part 1, Chapter 97
  - Chapter 97, TX Admin. Code pertains to Communicable Diseases (subchapter F for STDs); specific syphilis reporting requirements encompassed within this section
- ***HIV***. 25 Tex. Admin. Code § 97.133 (provider and all other enumerated health professionals must report AIDS) and 25 Tex. Admin. Code § 97.134 (all reports of AIDs and HIV must be reported within 7 calendar days of condition discovery)
- ***Cancer***. Texas Health and Safety Code Section 82.008 (all cancer cases witnessed in medical treatment facilities that can provide diagnosis or treatment services must be reported to the Texas Cancer Registry)

### Emergency Preparedness and Management Laws

- **Texas Statutes:**
  - Pursuant to **Chapter 418 “Emergency Management Plan”** (Title XVII), the **State Emergency Management Plan (CEMP)** is the master operations document for the State of Texas in responding to all emergencies.
- **Texas Administrative Code:**
  - **Chapter 64D-3**, Department of Health, Division of Disease Control

### Texas Emergency Management

- Among other reasons, Texas EM statutes are implemented to reduce the vulnerabilities of people and the communities resulting from natural, man-made, catastrophes, disasters, etc. and to prepare to the efficient and prompt rescue, care, and treatment of injured people or those whose positions have been compromised because of the disaster

## SLIDE 15                    THE CHALLENGE OF MULTIPLE STATE & LOCAL LEGAL POWERS

- **Overlap of State Entities:** The **Emergency Management Council** has representatives from different state and non-profit entities that convene at the state Operations Center (SOC) to provide advice on and assistance with response operations and coordinate the activation and deployment of state resources to respond to the emergency. Generally, state resources are deployed to assist local governments that have requested assistance

because their own resources are inadequate to deal with an emergency. The Council is organized by *emergency support function (ESF) -- groupings of agencies that have legal responsibility, expertise, or resources needed for a specific emergency response function.*

- **ESFs They are mechanisms for grouping functions most frequently used to provide support, both for declared disasters and emergencies under the Stafford Act.**
  
- **Texas Division of Emergency Management- (TDEM)** coordinates the state emergency management program, which is intended to ensure the state and its local governments respond to and recover from emergencies and disasters, and implement plans and programs to help prevent or lessen the impact of emergencies and disasters. TDEM is charged with carrying out a comprehensive all-hazard emergency management program for the State and for assisting cities, counties, and state agencies in planning and implementing their emergency management programs. - Chapter 418 of the Texas Government Code lays out an extensive set of specific responsibilities assigned to the Division.
  - **Responsibilities are as follows:**
    - **Emergency Planning:** TDEM maintains the State of Texas Emergency Management Plan and other specialized state plans. It also adopts standards for local emergency management plans, reviews those plans, and maintains a database of planning accomplishments.
    - **Training:** TDEM conducts an extensive emergency management-training program for local and state officials and emergency responders.
    - **Public Education & Information:** TDEM provides threat awareness and preparedness educational materials for the public, and also provides emergency public information during disasters.
    - **Hazard Mitigation:** TDEM administers a number of pre and post-disaster programs to eliminate or reduce the impact of known hazards.
    - **Response:** TDEM coordinates mobilization and deployment of state resources to respond to major emergencies and disasters
    - **Disaster Recovery:** TDEM administers disaster recovery programs for individuals and for local governments, state agencies, schools, hospitals, and other public entities.

**SLIDE 19 STATE DISASTER & EMERGENCY DECLARATION**

- **Governor Proclaims a State of Emergency § 418.014.**
  - Declared by **Executive Order or Proclamation** of Governor if s/he finds an emergency/disaster has occurred or the threat thereof is imminent
  - **Emergency shall continue** until Governor finds the threat/danger has been dealt with or s/he terminates the emergency by Order/proclamation

- No state of emergency may continue longer than 30 days, unless renewed by the Governor
- Executive orders/proclamations shall indicate:
  - Description of **disaster**
  - Designation of **area** threatened
  - Description of the **conditions** which have brought the emergency about or which make possible its termination.

**Sec. 418.004. DEFINITIONS. In this chapter:**

- (1) **“Disaster”** means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency..
- **Texas does not define ‘emergency’ separately**
- **“Energy emergency”** means a temporary statewide, regional, or local shortage of petroleum, natural gas, or liquid fuel energy supplies that makes emergency measures necessary to reduce demand or allocate supply.
- **Political subdivision: any county or incorporated city**

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**FEDERALISM & PREEMPTION:**

**LEGAL INTERACTION BETWEEN JURISDICTIONS**

**Overlap with Federal Government**

- **TDEM** also captures the authority and role of the federal government during presidentially declared disasters. It ensures that *all levels of government are able to mobilize as a unified emergency organization* to safeguard the well-being of Texas residents and visitors.

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**DISCUSSION: EARLY STAGES OF AN EMERGENCY**

**Question: What legal issues should you consider to determine initial courses of action for combating the spread of Novel Flu in your jurisdiction?**

- Whether the two counties have entered into a mutual aid agreement; and, if so, what the terms of the agreement provide.
- What terms the neighboring locality’s emergency management plan provide (as each local emergency management agency is required to prepare and keep current an emergency management plan); if the locality doesn’t have one, it might be because there is an interjurisdictional plan that covers that municipality instead, so you would want to

be privy to these agreement terms (**See Section 7.12, 7.13 below for the supporting authority on this; also TEX. GOV'T CODE § 418.106**)

- Texas Division of Emergency Management (TDEM) Executive Guide on Emergency Management – provides guidance on safety requirements and emergency management program implementation at the state and local level

**TEX Admin Code, Tit. 37 Section 7.12, 7.13 (1976)**

**RULE §7.12 Local Planning Required**

**Each local and interjurisdictional emergency management agency shall prepare, keep current, and distribute to appropriate officials a local or interjurisdictional emergency management plan** that includes the minimum content specified by the Division of Emergency Management in its local emergency planning standards and has been signed by the presiding officer(s) of the jurisdiction(s) for which it was prepared. Local and interjurisdictional plans shall be reviewed annually and must have been prepared or updated during the last five (5) years to be considered current. A copy of each plan and any changes to it will be provided to the Division. Texas Emergency Management Statutes|79

**RULE §7.13 Eligibility for Federal Incentive Programs Described**

(a) The Division of Emergency Management administers certain federal assistance programs authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended, and other statutes. **To participate in these programs, a city or county must meet, as a minimum, the following basic eligibility requirements:**

- (1) Have a local emergency management agency legally established by city ordinance or commissioner's court order or participate in an interjurisdictional emergency agency** established by joint resolution of the participating local government.
- (2) Have a local or interjurisdictional emergency management plan that meets state planning standards for minimum content and is current.**

**TEX. GOV'T CODE § 418.106**

Each city or interjurisdictional local plan under Section 418.106, must provide for: (1) wage, price, and rent controls; (2) curfews and other movement restrictions; and (3) limitations on utility use. The plan also must be sent to the State's Division of Emergency Management. 37 TEX. ADMIN. CODE § 7.12.

**Question: What existing legal authorities do you have to respond to a potential epidemic?**

- TEX. ADMIN. CODE § 7.25—The locality (under the direction of the mayor) can enter a mutual aid arrangement with another county to combat the spread of Novel Flu.

- TEX. GOV'T CODE §§ 418.108; 433.001 . In Texas, a **mayor or governing body of the city or Emergency Manager Director** (a role held by the mayor or county judge) may declare a local state of emergency. Note that the mayor or judge may elect to appoint an Emergency Management Coordinator, but that person does not have declaration authority. The mayor has the same powers, on a local level, as the governor under Chapter 418 of the Government Code.
  - Under a **local or state emergency**, each political subdivision shall have the power and *authority* to:
    - **Implement Emergency Plan.** Appropriate and expend funds; make contracts; obtains and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to survivors of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the state and federal emergency management agencies
    - **Establish Emergency Operations Center.** Establish, as necessary, a primary and secondary emergency operations center to provide continuity of government, and direction and control of emergency operations
    - **Effectuate Emergency Operations.** Assign or make available employees, property, and equipment relating to their county agencies and departments for emergency operations
    - **Request Assistance.** Request state assistance or invoke emergency-related mutual aid assistance by declaring a local state of emergency.
    - **Waiver.** Waive rules and regulations in the performance of: public work, entering into contracts; incurring obligations, employment of permanent and temporary workers, utilization of volunteer workers, rental of equipment, acquisition and distribution of supplies, material, and facilities.
    - **Take Prudent Measures.** Taking whatever prudent action is necessary to ensure the health safety, and welfare of the community
  - A **State Health Official** does not have the authority to declare a local state of emergency, but may declare a **public health emergency**. As implied by Tex. Admin Code, tit. 37 Section 7.26 which indicates “All local disaster operations will be directed by officials of local government.”
    - The SHO has authority to give **public notice of quarantine** and may initiate quarantine for purposes of **controlling the spread of notifiable diseases**.

**Question: What potential legal conflicts do you see arising concerning the neighboring jurisdiction’s actions and how might these be resolved?**

- Conflicts
  - Premature notice of quarantine.
  - Whether there is a mutual aid agreement—if so, the jurisdiction may be bound to assist in “direct” measures which may be premature.

- This could include sending prescription drugs from this jurisdiction to the neighboring jurisdiction, which could leave our jurisdiction in a future predicament.
- Resolution
  - Whether the neighboring jurisdiction has adopted an **emergency management plan** that conflicts with TDEM procedures
  - Request assistance from other intrastate localities with which the jurisdiction has a mutual aid agreement.
  - Request assistance from TDEM, and/or other state government entities.
- **Governor Declaration.** If the situation exceeds the capabilities of the local government to cope with the emergency or disaster, the Governor can declare a state of emergency for the state.

**Emergency management powers of political subdivisions – Various parts of Section 418**

- **Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state.**
- Under a **local or state emergency**, each political subdivision shall have the power and *authority* to:
  - Provide for the health and safety of property.
  - Declare an emergency pursuant to Section 418.108
  - Adopt a plan for the continuity of functions pursuant to Sec. 418.1101. PLAN FOR CONTINUITY OF FUNCTIONS
  - Plan and implement a comprehensive all-hazards emergency management programs pursuant to Sec. 418.112.
  - Pursuant to Section 418.104, of the Act, the political subdivision is authorized to establish in the county in which they are sited, inter-jurisdictional agencies by intergovernmental agreement, supported as needed by local city ordinance or commissioner’s court order

**SLIDE 41 MEDICAL SCREENING, TESTING, TREATMENT, & VACCINATIONS**

- *See Texas Health and Safety Code § 81.083 (2007); Texas Health and Safety Code §§ 122.005, 006 (1989)*
- **State Health Official may order an individual to be examined, tested, vaccinated, treated, or quarantined** for communicable diseases that have significant morbidity or mortality and present a severe danger to public health. *Individuals who are unable or unwilling to be examined, tested, vaccinated, or treated for reasons of health, religion, or conscience may be subjected to quarantine.*
- If the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual, or the individual's parent, if the

individual is a minor, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

- The governing body of a Type A general-law municipality may take any action necessary or expedient to promote health or suppress disease, including actions to prevent the introduction of a communicable disease into the municipality, including quarantine rules, and may enforce those rules in the municipality and in any area within 10 miles of the municipality. Note: El Paso operates under a Home Rule and not a Type A regime.
  - **Quarantine.** If the individual poses a danger to the public health, the State Health Officer may subject the individual to quarantine

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**ADDITIONAL EMERGENCY POWER**

**Epidemiological investigations in Texas**

- **Patient Records.** the Department of Health shall examine the records of a person who has a **disease of public health significance only** for purposes of *preventing and eliminating outbreaks of disease* and *making epidemiological investigations of reported cases of diseases of public health significance*
  - **Confidentiality.** Epidemiological reports can only be released in certain instances per the § 81.046. Confidentiality code:
    - (1) for **statistical purposes** if released in a manner that prevents the identification of any person;
    - (2) with the **consent** of each person identified in the information;
    - (3) **to medical personnel treating** the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, or federal, county, or district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information;
    - (4) to **appropriate federal agencies**, such as the Centers for Disease Control and Prevention of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition; or
    - (5) to **medical personnel to the extent necessary** in a medical emergency to protect the health or life of the person identified in the information.
    - (d) **In a case of sexually transmitted disease involving a minor** under 13 years of age, information may not be released, except that the child's

name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

- Additional considerations on disclosure include:
  - (e) A state or public health district officer or employee, local health department officer or employee, or health authority may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of, or reports or information about, a person examined or treated for a reportable disease by the public health district, local health department, or health authority without that person's consent.
  - (f) **Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary** during a public health disaster to law enforcement personnel solely for the purpose of protecting the health or life of the person identified in the report, record, or information. Only the minimum necessary information may be released under this subsection, as determined by the health authority, the local health department, or the department.
  - (g) A judge of a county or district **court may issue a protective order or take other action to limit disclosure** of medical or epidemiological information obtained under this section before that information is entered into evidence or otherwise disclosed in a court proceeding.
- **Reporting Requirements.** V.T.C.A., Health & Safety Code § **121.024**; DOH may adopt rules related to reporting diseases of significance to public health; Texas law indicates that the health reporting duties encompass by which a health authority must abide:
  - (3) reporting the presence of contagious, infectious, and dangerous epidemic diseases in the health authority's jurisdiction to the board in the manner and at the times prescribed by the board;
  - (4) reporting to the board on any subject on which it is proper for the board to direct that a report be made; and
  - (5) aiding the board in the enforcement of the following in the health authority's jurisdiction:
    - (A) proper rules, requirements, and ordinances;
    - (B) sanitation laws;
    - (C) quarantine rules; and
    - (D) vital statistics collections.

**The Federal Strategic National Stockpile (SNS)**

- SNS, part of the Center for Disease Control, has large quantities of medicine and medical supplies to protect the American public if there is a public health emergency (terrorist attack, flu outbreak, earthquake) severe enough to cause local supplies to run out.





- **Emergency management powers of political subdivisions.**
- **Presidential Declaration**
  - (1) **Requested Assistance.** At the *request of the Governor* of an affected State, or a *Chief Executive* of an affected Indian Tribe, the President may declare a major disaster or emergency if an **event is beyond the combined response capabilities** of the State, Tribal, and jurisdictional governments.
    - Among other things, this declaration allows **Federal assistance to be mobilized** and directed in support of State, Tribal, and jurisdictional response efforts.
    - In April 2013, The U.S. Department of Homeland Security’s Federal Emergency Management Agency (FEMA) announced that federal disaster assistance has been made available to Texas to supplement state and local response efforts due to the emergency conditions resulting from fertilizer explosions beginning on April 17, 2013, and continuing. The President's action authorizes the Department of Homeland Security, Federal Emergency Management Agency (FEMA), to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in McLennan County.
  - (2) **Executive Decision.** Under the Stafford Act (42 USC Chapter 68), the President can also declare an emergency *without a Gubernatorial request* if **primary responsibility for response rests with the Federal Government** because the emergency involves a subject area for which the United States exercises exclusive responsibility and authority.
    - In addition, in the absence of a specific request, the President may provide **accelerated Federal assistance** and Federal support where necessary *to save lives, prevent human suffering, or mitigate severe damage*, and notify the State of that activity.

**Question: What are the legal ramifications of a declaration of emergency or public health emergency on your ability to perform your duties?**

- Counties may initiate **protective measures**, such as evacuations and sheltering, recovery, and mitigation measures; the governor has most suspension powers by which counties must usually abide (*see* various Chapter 418 Sections – 16, 19, 20, 124)
- **Sec. 418.002** (6)—all political subdivisions have the option of participating in emergency management coordination efforts
  - *See* **Statewide Mutual Aid Agreement** – The governor can recommend that cities, counties, and other political subdivisions of the state undertake appropriate emergency management programs and assist and cooperate with those developed at the state level;

- Sec. 418.074. ACCEPTANCE AND ALLOCATION OF GIFTS AND GRANTS (e) A political subdivision may accept and use all services, equipment, supplies, materials, and funds to the full extent authorized by the agreement under which they are received by the state or political subdivision.
- Sec. 418.017. USE OF PUBLIC AND PRIVATE RESOURCES. (a) The governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster.
- *See also* **Emergency Management Assistance Compact (EMAC)**

**Question: What authority do you have to gain access to identifiable health data, and how can you best utilize this information to limit the spread of novel flu?**

- **45 CFR §164.512(b), HIPAA**—this section of HIPAA allows the **disclosure of patient records for communicable disease investigation**
  - Disclosure of Records. Access may be granted to “a *public health authority* that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.”
- **Texas Providers Must Allow Access**. Section 81.083 authorizes sweeping authority to take any such steps that are “ ... reasonable and necessary to prevent the introduction, transmission, and spread of disease in this state.” This includes disclosure authority.
  - **§161.0211. Epidemiologic or Toxicologic Investigations-Exception to Confidentiality**. This same statute creates an exception to confidentiality laws and also provides security to the practitioner by stating:
    - "(d) A person is not liable for damages or other relief for providing medical or other confidential information to the department during an epidemiologic or toxicologic investigation.
  - §241.153 provides other disclosure exceptions and protocol
    - **§81.046. Confidentiality** - Information submitted in reports required by this section is confidential, and is to be made public only when necessary to public health (for statistical reasons) or with the infected person’s consent or because some other legal issue could materialize (i.e. under-aged STD contraction). A report so submitted is not a violation of the confidential relationship between practitioner and patient.

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**QUARANTINE AND ISOLATION**

- The **Department of Health** is required to assess the public health status and needs of the state and administer and enforce laws and rules relating to the *control of communicable diseases, illnesses and hazards to health* among humans and from animals to humans, and the general health of the people of the state.

- **Authority of Quarantine.** specifies that a **State Health Officer (SHO), county health department director or administrator, or their designee**, has the **authority** to give public notice of quarantine, and to *initiate or terminate conditions of quarantine* for purposes of controlling the spread of notifiable diseases or other disease conditions
  - The SHO is responsible for declaring public health emergencies, under which **an order can be given to quarantine individuals who pose a threat to public health.**

**SLIDE 62 ENFORCING SOCIAL DISTANCING MEASURES**

- **TDEM.** The Division of Emergency Management is **authorized to provide**, within or without the state, **emergency management support** from available personnel, equipment, and other resources of state agencies and the political subdivisions of the state as may be necessary to reinforce emergency management agencies in areas stricken by emergency.

**SLIDE 65 DISCUSSION: NOVEL FLU IN SCHOOLS AND COMMUNITY CENTERS**

**Question: What social distancing measures would be viable options to limit the spread of novel flu, and who has the authority to institute them?**

- Texas law uses a variety of regulatory styles of language to cover a wide range of quarantine capabilities—in some instances, it enumerates specifics and in others, it generalizes what the designated officials have the authority to do by stating that their responsibilities can span across the wide “health, wellness, welfare” spectrum. Texas authority also distinguishes between different types of municipalities (*see* Type A Municipality control measures outlined in § 122.005 compared with Home Rule authority outlined in § 122.006).
- **State health authority, county/city health department officer or administrator, or their designee**, has the **authority** to give public notice of quarantine, and to *initiate or terminate conditions of quarantine* for purposes of controlling the spread of notifiable diseases or other disease conditions
- § 81.082. Administration of Control Measures: (a) A health authority has supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the department; (b) A communicable disease control measure imposed by a health authority in the health authority's jurisdiction may be amended, revised, or revoked by the department if the department finds that the modification is necessary; A control measure imposed by the department may not be modified or discontinued until the department authorizes the action.
- (e) The governor may terminate a declaration of a public health disaster at any time.
- (f) In this section, “control measures” includes:
  - (1) immunization;
  - (2) detention;
  - (3) restriction;

- (4) disinfection;
- (5) decontamination;
- (6) isolation;
- (7) quarantine;
- (8) disinfection;
- (9) chemoprophylaxis;
- (10) preventive therapy;
- (11) prevention; and
- (12) education.

- **§ 122.005. Powers of Type A General-Law Municipality\***

- (a) The governing body of a Type A general-law municipality may take any action necessary or expedient to promote health or suppress disease, including actions to:

- (1) prevent the introduction of a communicable disease into the municipality, including stopping, detaining, and examining a person coming from a place that is infected or believed to be infected with a communicable disease

\*Note that El Paso is operating under a Home Rule and not a Type A regime.

- There are limits to a health authority’s powers; per § 81.085. Area Quarantine language stated in subsection (a), “A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.”
- Also note that the health department may implement protective measures that are more restrictive or involved than being implemented at the state level; so long as the department contains its quarantine efforts to its own jurisdiction, it is allowed to do what is “necessary and most appropriate to arrest, control, and eradicate the threat to the public health” - V.T.C.A., Health & Safety Code § 81.085

**Question: What legal, political and economic considerations should be taken into account prior to effectuating social distancing measures?**

- As Texas recognizes home rule municipalities, it is important to recognize that El Paso can exercise its authority as a home-rule municipality and is therefore able to implement its own protective measures as necessary
  - § 122.006. Powers of Home-Rule Municipalities – recognizes that the municipality may adopt rules to protect the health of its residents and also provide for the establishment of quarantine stations, emergency hospitals, and other hospitals
- **§401.056. —Emergency management powers of the department** – If the department finds that an emergency exists, it may issue an emergency order which will be effective immediately
- **Considerations**
  - *Confidentiality Considerations* – reports related to cases or suspected cases of disease that are furnished to the health department are confidential no matter

from whom they originated; these reports are **not public information** under Chapter 552, Government Code and may not be released the public (not even in support of resolving criminal cases thru subpoenas); medical information may only be released in consideration of public health statistical reporting, with the infected person’s consent, or to the personnel treating the infected person; other instances eligible for information release and the parties who are eligible to receive the information are detailed in the same authority; **Only the minimum necessary information may be released under this subsection, as determined by the health authority** - § 81.046. Confidentiality

- *Reporting Considerations* – failure to report a disease or health condition is responsible for a Class B misdemeanor § 81.049. Failure to Report
- *Penalty Considerations* – § 81.085. Area Quarantine; Criminal Penalty person commits an offense if he/she knowingly fails or refuses to obey a quarantine or emergency rule, order, instruction from the department or health authority published during a quarantine for the purposes of protecting that individual and the public from communicable diseases
  - Peace officers can use reasonable force to secure a quarantine area and prevent people from leaving or entering the area

**SLIDE 69 LICENSING AND CREDENTIALING**

**EMAC and State-Level Agreements**

- **Emergency Management Assistance Compact (EMAC).** In accordance with Chapter 778, Texas Gov’t Code, the state adopted the Emergency Management Assistance Compact (EMAC).
  - EMAC provides that **any** person holding a **license, certificate, or other permit** issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, such person shall be deemed licensed, certified, or permitted by the state requesting assistance *to render aid involving such skill* – **Article V Licenses and Permits.**
- **The Statewide Mutual Aid Agreement** allows governing bodies of political subdivisions in the state to enter into **intrastate agreements for reciprocal emergency aid and assistance** (e.g. services, equipment, supplies, materials, or funds for emergency management efforts).

**Volunteers**

**§ 74.152. Unlicensed Medical Personnel** - Persons not licensed or certified in the healing arts who in good faith administer emergency care as emergency medical service personnel are not liable in civil damages for an act performed in administering the care unless the act is wilfully or wantonly negligent. This section applies without regard to whether the care is provided for or in expectation of remuneration.

**SLIDE 75 DISCUSSION: HOSPITAL STAFF SHORTAGES**

**Question: What are the potential legal and political consequences of utilizing VHPs in your jurisdiction?**

- This is separate from good Samaritan statutes lower the applicable standard of care owed by the person providing assistance who does not belong to a volunteer or assistance program
- When local hospitals have serious staff shortages and are in need of assistance, the hospital may report this shortage and seek assistance from local public health authorities by requesting VHPs
- Texas has statutory provisions that provide immunity to ordinary volunteers of charitable organizations, but Texas law also shields from civil liability a VHP who serves as a direct service volunteer of a charitable organization. **Tex. Civ. Prac. & Rem. § 84.004(c)**
- For the VHP to be eligible for such immunity, the patient or party responsible for the patient must sign a written statement that acknowledges: (1) that the volunteer is providing care that is not administered for or in expectation of compensation, and (2) the limitations on the recovery of damages from the volunteer in exchange for receiving health care services. Notwithstanding these requirements, a VHP can still be immune from civil liability even if the patient is incapacitated due to illness or injury or the patient is a minor and the person responsible for the patient is not reasonably available to sign the acknowledgment required - **Tex. Civ. Prac. & Rem. § 84.004(f)**.
- Texas also provides immunity to volunteers of a charitable organization for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's duties or functions. **Tex. Civ. Prac. & Rem. § 84.004(a) (2010)**.

**Question: How do these consequences change after the declaration of an emergency or public health emergency?**

- **Immunity. § 74.151. Liability for Emergency Care** authorizes immunity when volunteers are used after a public health emergency is declared. During a state of public emergency, there are greater protections for the use of VHPs, such as heightened immunity.
  - **§ 74.151. Liability for Emergency Care** (a) A person who in good faith administers emergency care is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent, including a person who: (1) administers emergency care using an automated external defibrillator; or (2) **administers emergency care as a volunteer who is a first responder as the term is defined under Section 421.095, Government Code.; however, the person who provided the care is not immune from liability if he/she caused the emergency**
    - **§ 421.095. DEFINITIONS.** In this subchapter:
  - "First responder" means a public safety employee or volunteer whose duties include responding rapidly to an emergency. The term includes:
    - a peace officer whose duties include responding rapidly to an emergency;
    - fire protection personnel under Section 419.021;

- a volunteer firefighter who is: (i) certified by the Texas Commission on Fire Protection or by the State Firemen's and Fire Marshalls' Association of Texas; or (ii) a member of an organized volunteer fire-fighting unit as described by Section 615.003; and an individual certified as emergency medical services personnel by the Department of State Health Services.

## **SLIDE 80                      STANDARD OF CARE IN EMERGENCIES**

**§74.001 Definitions**, Texas Civil Practice and Remedies Code—"Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

## **SLIDE 82                      GOVERNMENTAL (SOVEREIGN) IMMUNITY**

### **Government Employees**

- **Federal Employees Reform and Tort Compensation Act of 1988** ("Westfall Act"), 28 U.S.C. 2679 amended the FTCA.
  - The Westfall Act gives **immunity** to **any wrongful or negligent act** that an employee commits while acting *within the scope of his or her office or employment*.
  - Congress required the **federal government to accept sole responsibility** for its employees' actions in the scope of employment, leaving those employees free to administer government policies without fear of personal liability.
    - See [28 USC §2680](#)—**Exceptions to the FTCA**
- **Texas Employees**. Covered under the Civil Practice and Remedies Code, Chapter 108, Limitation of Liability for Public Servants. Covered so long as the act or omission is within the course and scope of duties. Limits personal liability of the public servant
  - Local health authorities are "state officers when performing duties prescribed by state law" under Health and Safety Code § 121.024; therefore, they may be entitled to protections for state officers.
  - Civil Practice and Remedies Code, Chapter 104, State Liability for Conduct of Public Servant - Provides for indemnification by state (state pays damages awarded against covered person after trial or settlement), rather than immunity from liability.
- **Interstate Immunity**. The Texas-adopted EMAC provides officers or employees of a party state rendering aid in another state pursuant to this compact to be considered **agents of the requesting state for tort liability and immunity purposes**.
  - *No party state or its officers or employees* rendering aid in another state pursuant to this compact shall be liable on account of **any act or omission in good faith** on



the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith.

- **Good faith** shall not include willful misconduct, gross negligence, or recklessness.
- **Bottom Line:** An officer or employee rendering aid in another state pursuant to the EMAC shall be considered agents of the requesting state and shall not be liable for any good faith act or omission in connection therewith

**SLIDE 83**

**GOOD SAMARITAN LAWS**

- **Scope**
  - **Good Samaritan laws**, which exist in all 50 states and the District of Columbia, are *narrow in scope* and generally provide *protection only for emergency aid at the scene* of an emergency.
- **Affirmative Defense**
  - **Good Samaritan statutes (for unlicensed personnel)** offer only an affirmative defense in a liability action; it is not a legal grant of immunity from suit (immunity in TX is reserved for official volunteer status personnel – i.e. first responders, licensed volunteers, etc.)
- **Texas Good Samaritan Laws** provides **immunity from civil liability** to any person, including those licensed to practice medicine, who **gratuitously and in good faith renders emergency care or treatment** either in direct response to emergency situations related to and arising out of a public health emergency declared, a state of emergency, or at the scene of an emergency outside of a hospital, doctor’s office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, for **any civil damages** as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment **UNLESS** the act is willfully or wantonly negligent
  - **Legislative Intent.** The Legislature wants to encourage health care practitioners to provide necessary emergency care to all persons without fear of litigation.
  - **Scope of Immunity.** The immunity provided applies to damages as a result of *any act that injures the party as long as it is done in good faith*
  - **Limitation of Immunity.** The immunity provided does not apply to medical care or treatment **unrelated to the original situation** that demanded immediate medical attention, or care or treatment proven to amount to conduct that is **willful and wanton** and would likely result in injury so as to affect the life or health of another.

