

APPLYING ARIZONA LAW TO PUBLIC HEALTH EMERGENCIES

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Presentation Overview

- Emergency Declarations
- Emergency Powers
- Professional Licensure
- Liability Protections
- Emergency Plans

Disclaimer:

- This presentation has not been reviewed by the Attorney General or his executive staff and does not express the official position of the Attorney General.
- The information provided in this presentation does not constitute legal advice. Please consult with your legal counsel for direct, legal advice.



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- **Emergency Declarations**

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Emergency Declarations

- State of Emergency
- State of War Emergency
- Local Emergency
- Public Health Authority during State of Emergency or State of War Emergency



Emergency Declarations

□ A.R.S. Title 26, Chapter 2, Article 1 (Emergency Management)

Emergency beyond control of single county, city, or town	US attacked or Feds advise attack is imminent	Within county, city, or town but outside assistance required
↓	↓	↓
Governor declares state of emergency	Governor declares state of war emergency	Mayor or Chairman of the Board of Supervisors declares local emergency



Emergency Declarations

- "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons or property within the state caused by air pollution, fire, flood or floodwater, storm, epidemic, riot, earthquake or other causes, except those resulting in a state of war emergency, which are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single county, city or town, and which require the combined efforts of the state and the political subdivision.

A.R.S. § 26-301



Emergency Declarations

- "State of war emergency" means the condition which exists immediately whenever this nation is attacked or upon receipt by this state of a warning from the federal government indicating that such an attack is imminent.

A.R.S. § 26-301



Emergency Declarations

- "Local emergency" means the existence of conditions of disaster or of extreme peril to the safety of persons or property within the territorial limits of a county, city or town, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of such political subdivision as determined by its governing body and which require the combined efforts of other political subdivisions.

A.R.S. § 26-301



Emergency Declarations

- A.R.S. Title 36, Chapter 6, Article 9 (Public Health Control)

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    graph TD
      A[Declared state of emergency or state of war emergency with occurrence of or imminent threat of illness] --> B[Arizona Department of Health Services coordinates public health emergency response]
    
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Emergency Declarations

- During a state of emergency or state of war emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability, the department shall coordinate all matters pertaining to the public health emergency response of the state.

A.R.S. § 36-787



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Emergency Powers

- Local Emergency
 - Mayor or Chairman of the Board of Supervisors may govern by proclamation and has authority to impose all necessary regulations to preserve the peace and order, including but not limited to:
 - Imposing curfews
 - Ordering businesses to close
 - Closing public access to any public building, street, or public place
 - Asking law enforcement for assistance



Emergency Powers

- State of Emergency
 - Governor may:
 - Direct all State agencies to utilize and employ State personnel, equipment, and facilities to provide assistance during the emergency
 - Governor has complete authority over State agencies and has the right to exercise all police powers vested in the State



Emergency Powers

- State of War Emergency
 - Governor may:
 - Suspend statutes and rules if they would prevent, hinder or delay mitigation of the effects of the emergency
 - Commandeer and utilize any property deemed necessary and for which the State will pay reasonable compensation
 - Governor has complete authority over State agencies and shall exercise all police powers vested in the State



Emergency Powers

- Public Health Emergency
 - Governor, in consultation with ADHS Director, may:
 - Mandate medical examinations for exposed persons
 - Ration medicine and vaccines
 - Provide for transportation of medical support personnel and ill and exposed persons
 - Provide for procurement of medicines and vaccines



Emergency Powers

- Public Health Emergency with occurrence or imminent threat of a highly contagious and highly fatal disease
 - Governor, in consultation with ADHS Director, may:
 - Mandate treatment or vaccination of persons who are diagnosed with illness resulting from exposure or who are reasonably believed to have been exposed or who may reasonably be expected to be exposed
 - Isolate and quarantine persons



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Professional Licensure

- Any person holding a professional license or certificate issued by another state may render professional aid as if the license or certificate had been issued in this state.
 - ▣ Arizona must issue a substantially similar license or certificate

A.R.S. § 26-310



Professional Licensure

- A pharmacist who is not licensed in this state, but who is currently licensed in another state, may dispense prescription medications during a declared emergency if both of the following apply:
 - ▣ The pharmacist has proof of licensure in another state
 - ▣ The pharmacist is engaged in a legitimate relief effort during the period of time an emergency has been declared

A.R.S. § 32-1910



Professional Licensure

- Emergency Management Assistance Compact (EMAC)
 - ▣ Reciprocal recognition of professional licenses and certificates among States that adopt EMAC
 - ▣ Governor may prescribe limitations and conditions

A.R.S. § 26-402



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- Emergency Plans



Liability Protections

- Liability:
 - ▣ Actual or potential responsibility (exposure to litigation) for damages (injuries or losses to others) resulting from an action or failure to act
- Two types:
 - ▣ Civil Liability
 - ▣ Criminal Liability



Liability Protections

- Important for volunteer response, protection of public health
- No protection for willful misconduct, gross negligence, or bad faith



Liability Protections

- Public Health Emergency
 - Any person taking an action required by law is immune from civil and criminal liability
 - Action is presumed to be in good faith
 - State of emergency immunities, under A.R.S. § 26-314, are also available

A.R.S. § 36-790



Liability Protections

- State of Emergency
 - State and its political subdivisions are immune from any claim based upon the acts of emergency workers
 - Emergency workers have the same responsibilities, immunities, and workers' compensation benefits as state or political subdivision officers, agents, and employees performing similar work
 - State and political subdivisions must provide liability coverage, including legal defense, of emergency workers

A.R.S. § 26-314



Liability Protections

- Emergency Management Assistance Compact (EMAC)
 - Officers and employees of another state that is rendering aid pursuant to the compact have the same immunities as state agents
 - Another state, its officers, and its employees are immune from any claim for actions taken while rendering aid pursuant to the compact

A.R.S. § 26-402



Liability Protections

- Health Care Institutions
 - No liability protection
 - Absent legislative action health care institutions cannot be insulated from liability
 - Prepare defenses
 - Emergency plans



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- **Emergency Plans**



Emergency Plans

- Duty to Plan
- Help clarify standards of care
 - Temporary Waivers of Health Care Institution Licensure
 - Crisis Standards of Care Protocols



Emergency Plans

- Temporary Waivers of Health Care Institution Licensure
 - Unable to comply with licensure requirements because of emergency situation
 - State waiver
 - Federal waiver



Emergency Plans

- State Waiver
 - Must be a declared emergency
 - Must be in geographic area of the emergency
 - Can waive individual rules



Emergency Plans

- Federal Waiver
 - Must be a presidential declared emergency
 - Must be invoked by Health and Human Services Secretary
 - Must be in geographic area of the emergency
 - Can waive
 - Certain conditions of participation, certification, and program participation requirements
 - Professional licensure requirements
 - EMTALA sanctions
 - Deadlines and time tables for the performance of required activities



Emergency Plans

- Crisis Standards of Care Protocols
 - Create
 - Exercise
 - Implement



Emergency Plans

- Crisis Standards of Care Protocols
 - Not intuitive
 - Changing from a patient focus to community focus
 - Ethical Considerations
 - Complex decisions that require deliberation



Thank You

- Questions?
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