

Multiple Levels of Emergency Preparedness:

Where Do Municipalities Fit?

By C. Christine Fillmore, Esq.

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In recent years, we have been bombarded by almost daily reports of potential pandemics, natural disasters and concerns about terrorist attacks. These events range from local to statewide, national to global. The size of the emergency can dictate how many layers of government agencies will be involved. In almost all cases, however, local government will be the first to respond. Given the current concern regarding influenza, this is a good time to review the basics that all municipal officials should know regarding the larger picture of emergency management and how municipal officials fit into it when the problem affects an area beyond municipal borders.

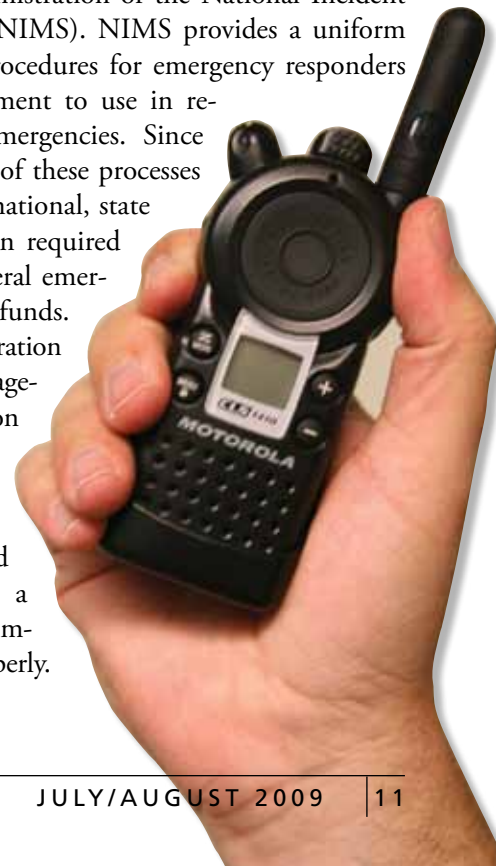
“Emergencies” can take a wide variety of forms. Here in New Hampshire, we witnessed significant flooding events in 2005 and 2006, affecting large portions of the state, and an ice storm in late 2008 which caused almost total loss of electric and telephone service for up to 12 days in several communities. New Hampshire and the federal government have concentrated in recent years on bioterrorism, natural disasters and pandemics. Most recently, federal and state governments have paid close attention to the potential for an influenza pandemic or other public health emergency. While each type of disaster may bring unique challenges, many disasters require similar responses: emergencies must be contained, people need medical treatment, supplies must be distributed, debris must be removed, infrastructure must be rebuilt. These types of emergencies require planning and coordination among all levels of government.

It is also important to understand that emergency management consists of more than the actual response to an event. According to New Hampshire Homeland Security and Emergency Management, there are four steps to emergency management: mitigation, planning, response and recovery. When there is no emergency, officials should be working together to mitigate potential hazards and plan for emergency responses. During an emergency, the focus shifts to the response itself. Afterward, officials concentrate on recovery but begin almost immediately to evaluate the lessons learned during the response and implement those lessons in a new round of mitigation and planning. Thus, preparedness is an ongoing process. Plans should be improved continuously to reflect new experiences, new threats, new resources and technologies, and changes in finances and personnel.

Emergency Plans: Which Ones When?

Which plans? All of them, at all levels. Local officials are not only involved with their local Emergency Management Plan but also play roles (whether they know it or not) in regional, state, multi-state and federal response plans.

Federal. Federal emergency management is coordinated by the Federal Emergency Management Agency (FEMA), which is part of the U.S. Department of Homeland Security. FEMA prepares the nation for hazards, manages federal response and recovery efforts regarding any national emergency incident and administers the National Flood Insurance Program. Since 2004, FEMA has also coordinated the development and administration of the National Incident Management System (NIMS). NIMS provides a uniform set of processes and procedures for emergency responders at all levels of government to use in responding to public emergencies. Since 2005, implementation of these processes and procedures at the national, state and local level has been required in order to receive federal emergency preparedness funds. The National Integration Center Incident Management Systems Integration Division (IMSI) publishes the standards, guidelines and compliance protocols used to determine whether a governmental unit has implemented NIMS properly.



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The State of New Hampshire adopted a statewide incident control system in 2004 based on NIMS to ensure state compliance with the program. RSA 21-P:52. However, local and regional plans must comply as well.

Multi-State. New Hampshire is part of the only “all-hazards” multi-state consortium to support multi-state emergency preparedness planning. The Northeast States Emergency Consortium (NSEC) includes Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York and Vermont. Led by state directors of emergency management (including New Hampshire’s Director of Homeland Security and Emergency Management, Christopher M. Pope) and funded by the Federal Department of Homeland Security, NSEC is a non-profit organization that develops, promotes and coordinates “all-hazard”

emergency management activities among its member states and assists with coordination between its members and the Federal Department of Homeland Security. In this area of the country, such a multi-state organization makes sense because, unlike many other areas in the country, the northeast consists of several small, densely populated states. An event that might only affect one state in other parts of the country, such as a storm, an earthquake or an outbreak of disease, is likely to affect a number of states in our region.

New Hampshire. In New Hampshire, the Governor, the Director of Homeland Security and Emergency Management and the Commissioner of the Department of Health and Human Services coordinate to direct most statewide emergency responses.

Under RSA 21-P:34 – :38, New Hampshire’s overall state emergency response

system operates under the direction of the Governor and New Hampshire’s Director of Homeland Security and Emergency Management (HSEM), Christopher M. Pope. Since 2003, HSEM and the New Hampshire Department of Health and Human Services (DHHS) have been working together to develop an all-hazards emergency preparedness plan for the state. The State Emergency Operations Plan (EOP) addresses a wide variety of issues including terrorism, transportation, communications and alerts, public works and engineering, fire fighting, public information, health and medical services, search and rescue, food and water, energy, law enforcement and security, animal health, and hazardous materials. More recently, the agencies jointly developed a plan to respond to a pandemic influenza emergency and held training drills around the state to test regional responses to a public health emergency.

Under RSA 4:45, the Governor has the power to declare a state of emergency by executive order, as does the legislature by a concurrent resolution of the House and Senate. A “state of emergency” is a condition, situation or set of circumstances deemed to be so extremely hazardous or dangerous to life or property that it is necessary and essential to invoke, require or utilize extraordinary measures, actions and procedures to lessen or mitigate possible harm. RSA 21-P:35, VIII. During a state of emergency, the Governor has emergency powers to enforce laws, rules and regulations regarding emergency management, to assume control of all emergency management forces in the state, to manage emergency materials and services, and to order evacuations. RSA 4:45.

The Director of HSEM has authority to develop the State EOP and, when an emergency arises, works in concert with the Governor (who may assume direct operational control over emergency management during a state of emergency). RSA 21-P:37.

In a public health emergency, and particularly in the case of a communicable disease such as influenza, the Commissioner of DHHS is empowered to investigate outbreaks, order quarantine and isolation to prevent the spread of a disease, order persons who pose a threat to the life and health of the public to receive treatment and care to eliminate the threat, purchase and distribute vaccines and treatment, establish acute care centers and educate the public about communicable diseases. RSA 141-C:4; RSA 141-C:26. The Commissioner may also order anyone who is suspected of having or carrying a communicable disease to undergo diagnostic testing. RSA 141-C:9. In certain situations, the Commissioner may order any public building to be closed and/or decontaminated, and

may cancel public events or gatherings. RSA 141-C:16-a, :16-b.

New Hampshire’s “All Health Hazard Regions.” In 2005, New Hampshire’s 234 municipalities were divided into 19 All Health Hazard Regions (AHHR).

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The AHHRs receive state funding to develop regional public health emergency response plans. Public health emergencies, like other major emergencies, rarely respect municipal boundaries. The AHHR system was intended to prepare for large-scale public health events that would require a response exceeding the capacity of a single municipality.

Over the past four years, AHHRs have developed response plans, identified acute care centers, neighborhood emergency centers, points of dispensing vaccination and treatment and mass quarantine centers. They have conducted tabletop exercises using the U.S. Department of Homeland Security’s guidelines, identifying gaps in the plans and fixing them. Each region has included a variety of local officials and stakeholders in the planning process, including selectmen, town managers, local emergency management directors, health officers, fire chiefs, police chiefs, EMT chiefs, school representatives, representatives from hospitals, public health networks and local health providers.

Each AHHR covers a number of individual municipalities, each of which, in turn, has its own local Emergency Management Plan. This means that the AHHR plan should coordinate with and complement the local municipal Emergency Management Plans, and vice versa. For instance, the local

plans should identify points of contact between municipalities and the AHHR and inter-municipal chains of command so that communication is not interrupted and operational confusion is kept to a minimum. Similarly, the plans should provide consistent

direction for the allocation of resources and a system for making that determination. Each AHHR plan should address the coordination of training for first responders in a public health emergency and, if local departments are expected to provide this training, it is important for them to communicate with the AHHR so that this happens.

Municipalities. RSA 21-P:39 requires each municipality to establish a local emergency management organization. The local director of emergency management is appointed (and removed) by the municipality’s governing body, and serves subject to the direction and control of the governing body. RSA 21-P:39, I. When a crisis occurs, the municipality may implement the plan and exercise emergency powers, in some cases “without regard to time-consuming procedures and formalities prescribed by law,” although all constitutional requirements must be met. RSA 21-P:39-III. For example, one important constitutional limitation on local power is that private property may not be “taken” by the government without just compensation.

A local emergency management plan should address as many aspects of a public emergency as possible. The plan should be developed with input from all municipal departments, including the governing body, police, fire,

EMT, health officer, public works, water, sewer, waste disposal, financial and recordkeeping. It is easy to see how public safety personnel will be called upon to help in an emergency, but what about other parts of local government? Don't overlook the effect that emergencies may have on "ordinary" operations such as computer systems, payroll, recordkeeping and legal notices. Administrative staff should be consulted about the effect

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of emergencies on their operations to minimize interruptions and avoid additional problems. And, while the portions of a plan addressing terrorism are confidential under RSA 91-A:5, VI, emergency response plans should generally be shared with everyone in local government who needs to know. What can you as a local official do to help? Become familiar with your local emergency response plan and your role in it. As it is updated, stay informed. Where, physically, is the plan kept? Will it be available when it is needed?

In a Crisis, Who's in Charge?

It should be obvious by this time that there are many levels of government involved in emergency response. However, when local government responds to an emergency, it can be confusing at times to figure out which person has what authority. Let's look at a hypothetical situation as an example.

Assume for a minute that a highly communicable disease has begun to spread in New Hampshire. This disease is easily transmitted from person to person. The Governor has declared a State of Emergency. The Commissioner of DHHS has sent notices through the Health

Alert Network to local health officers ordering them to assist with immunizations and containment. Cases have appeared in your own community. Some local officials have been exposed, and a few have become sick.

So, who is in charge? The answer may not be as clear as we would like, but it is critical to answer this question *before* an emergency occurs. Once the emergency begins, there is rarely time to figure it out. Each official will do what he or she believes is in the public interest. This

can lead to confusion, when (1) no one takes charge and things fall through the cracks, or (2) too many people assume the role of chief. In either situation, the public interest is not well-served.

Many organizational tasks and processes will be spelled out in the local Emergency Management Plan and in the All Health Hazard Regional Plan. Providing much of the framework for those plans, however, is the basic structure of state and local government. Each official in a municipality has statutory duties and responsibilities. The plan that is developed should take advantage of this natural organizational structure so that each official is assigned duties that are compatible with his or her statutory function.

For instance, general daily municipal operations are ordinarily the responsibility of the governing body (city council/manager, town council, board of selectmen, town manager). RSA 41:8; RSA Chapter 37. These operations usually include the administration of policies developed by the voters, employment of local employees and coordination of the actions of local officials. They also direct the

expenditure of municipal funds. If one or more of these people become sick, how will the governing body function? It is very important for a local plan to address temporary and permanent succession planning using the procedures outlined in the local charter and in the law (such as RSA 669:63, replacement of vacancies on boards of selectmen).

However, while governing bodies usually coordinate the actions of municipal departments, in a public emergency this role may be filled by the local emergency management director instead. Each municipality's Emergency Management Plan should identify a local director as well as a chain of command and a contingency plan in case one or more people in that chain are unavailable. Of course, given the governing body's supervisory role over the emergency management director under RSA 21-P:39, and the governing body's critical role in approving expenditures and managing the (sometimes very lengthy) aftermath of a disaster or outbreak, the local emergency management director should work together with the governing body before, during and after a crisis. So, for example, the local Emergency Management Plan should specify exactly when and how the governing body will be notified of, and consulted with, regarding events as they develop.

In a public health emergency, local health officers have a variety of responsibilities. They are part of the local community response to any health emergency and should be part of the local and regional Emergency Management Plan. Acting under the direction of the local Emergency Management Director, a health officer and governing body, acting together as the board of health, may perform a variety of tasks regarding disease detection, reporting and response. In addition, the New Hampshire Department of Health and Human Services maintains

direct contact with local health officers through its Health Alert Network. DHHS has statutory authority to issue written orders for quarantine and isolation. RSA 141-C:11. Under this authority, DHHS can enlist the help of local health officers to assist in isolation and quarantine efforts. DHHS may also ask a health officer to assist with

required by DHHS to carry out written orders to take people into custody and place them into isolation or quarantine. RSA 141-C:12, III. They may also be required to carry out written orders from DHHS to take an individual into custody and transport them to receive medical treatment. RSA 141-C:15, VI. They may be required to

See RSA 154:7, :7-a, :8 and :8-a. The officer in charge maintains order and directs other officials. However, there are times when a local official does not have absolute directional authority over an emergency. All of these officials are required to carry out orders from DHHS or the New Hampshire Department of Safety's Homeland Security and Emergency Management.

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locating specific contact people in a municipality or region, locating homebound people and educating the public about containment efforts and where local services can be accessed. RSA 141-C:5. Local and regional plans should address this role and take advantage of the health officer's natural position as a liaison for public health information between municipalities, regional and state contacts.

Local law enforcement officers are also likely to be involved in a variety of capacities in which they must carry out orders. They may, for instance, be

carry out evacuation orders issued by the Governor under RSA 4:45 or assist the health officer in his or her duties.

In an acute medical emergency (where a person needs immediate help), the general rules of command for first responders will probably apply. As a general rule, New Hampshire law provides that the fire chief or fire officer in charge at the scene generally directs the response. If there is no fire officer, then the police chief or police officer in charge at the scene directs the response. If neither fire nor police have responded, then emergency medical personnel are in charge.

These are but a sample of the questions that may arise when emergency responses are required. In all cases, it is critical for local plans to include succession planning, cross-training and contingency strategies so that the plan can continue to operate well—even if one or more key officials are unavailable.

Christine Fillmore is a Staff Attorney with the New Hampshire Local Government Center's Legal Services and Government Affairs Department. For more information on this and other topics of interest to local officials, LGC's legal services attorneys can be reached Monday through Friday from 8:30 a.m. to 4:30 p.m. by calling 800.852.3358, ext. 384.

Resources

Information regarding FEMA and NIMS, including a wide array of explanatory and training materials, may be found at the federal government's website: www.fema.gov/emergency/nims.

The New Hampshire Public Health Emergency Preparedness and Response Plan may be found at www.dhhs.state.nh.us/DHHS/CDCS/LIBRARY/Policy-Guideline/dphs-health-emergency-plan.htm.

Information regarding the New Hampshire Division of Homeland Security and Emergency Management (within the Department of Safety) may be found on its website at www.nh.gov/safety/divisions/hsem.

For more information regarding the New Hampshire DHHS and All Health Hazard Regions, including a map of the regions and contact information for each region, visit the state's website at www.dhhs.state.nh.us/DHHS/CDCS/Library/Fact+Sheet/PPCC-AHR-Map.htm. DHHS's Pandemic Planning Coordinating Committee has additional information on its website at www.dhhs.state.nh.us/DHHS/CDCS/ppcc.htm. A draft AHHR response plan may be found at http://www.unh.edu/emergency/avianflu/Planning/All_Hazards_Plan.doc.

Information regarding the roles and responsibilities of local health officers may be found at www.dhhs.state.nh.us/DHHS/CHD/health-officer.htm.