



The Centers for Law & the Public's Health:
A Collaborative at Johns Hopkins and Georgetown Universities

CDC Collaborating Center for Public Health Legal Preparedness
WHO/PAHO Collaborating Center on Public Health Law and Human Rights

Interjurisdictional Legal Responses During Public Health Emergencies and Altered Standards of Care

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Objectives

- Legal Environment in Emergencies
- **Legal Triage**
- Altered/Situational Standards of Care

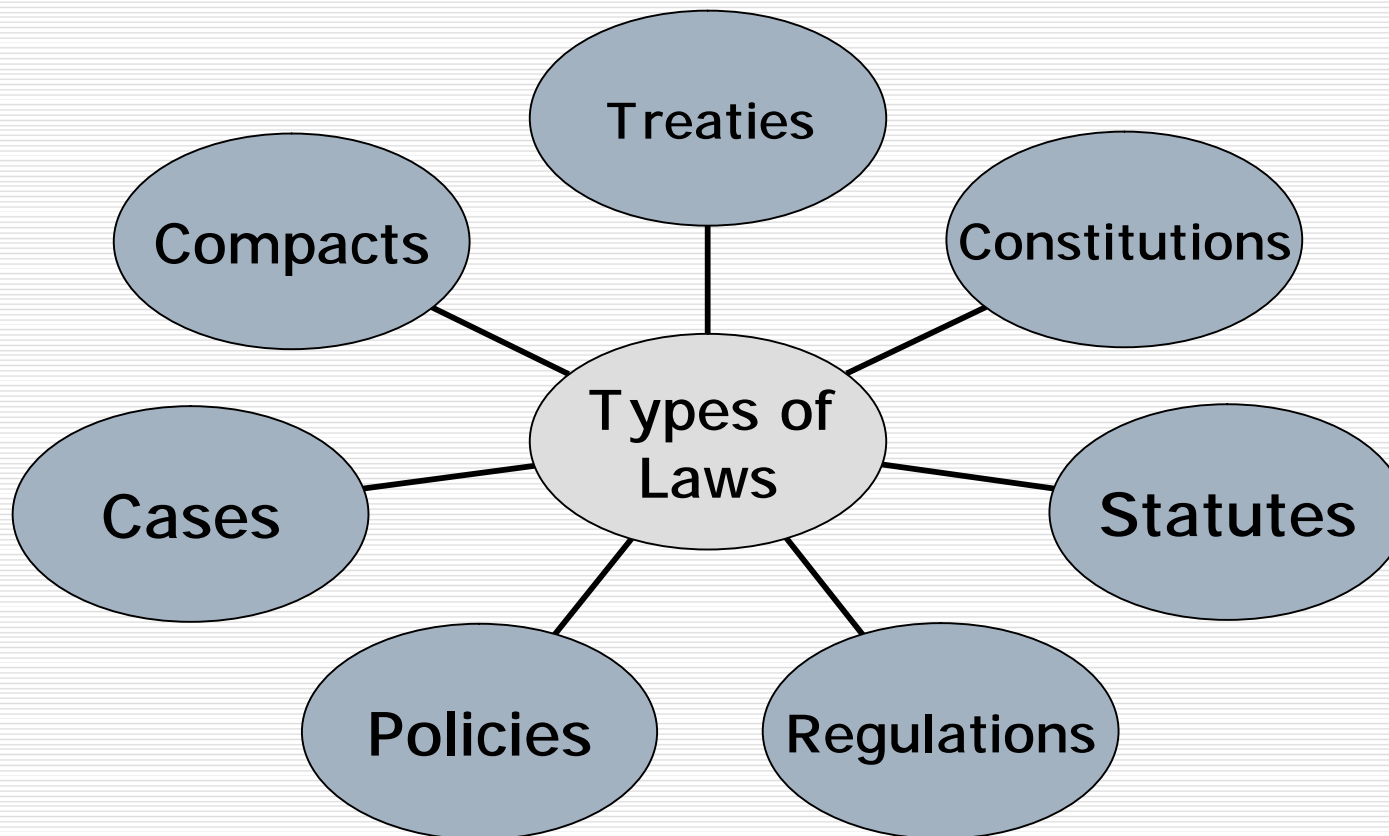


Assessing the Legal Environment in Emergencies

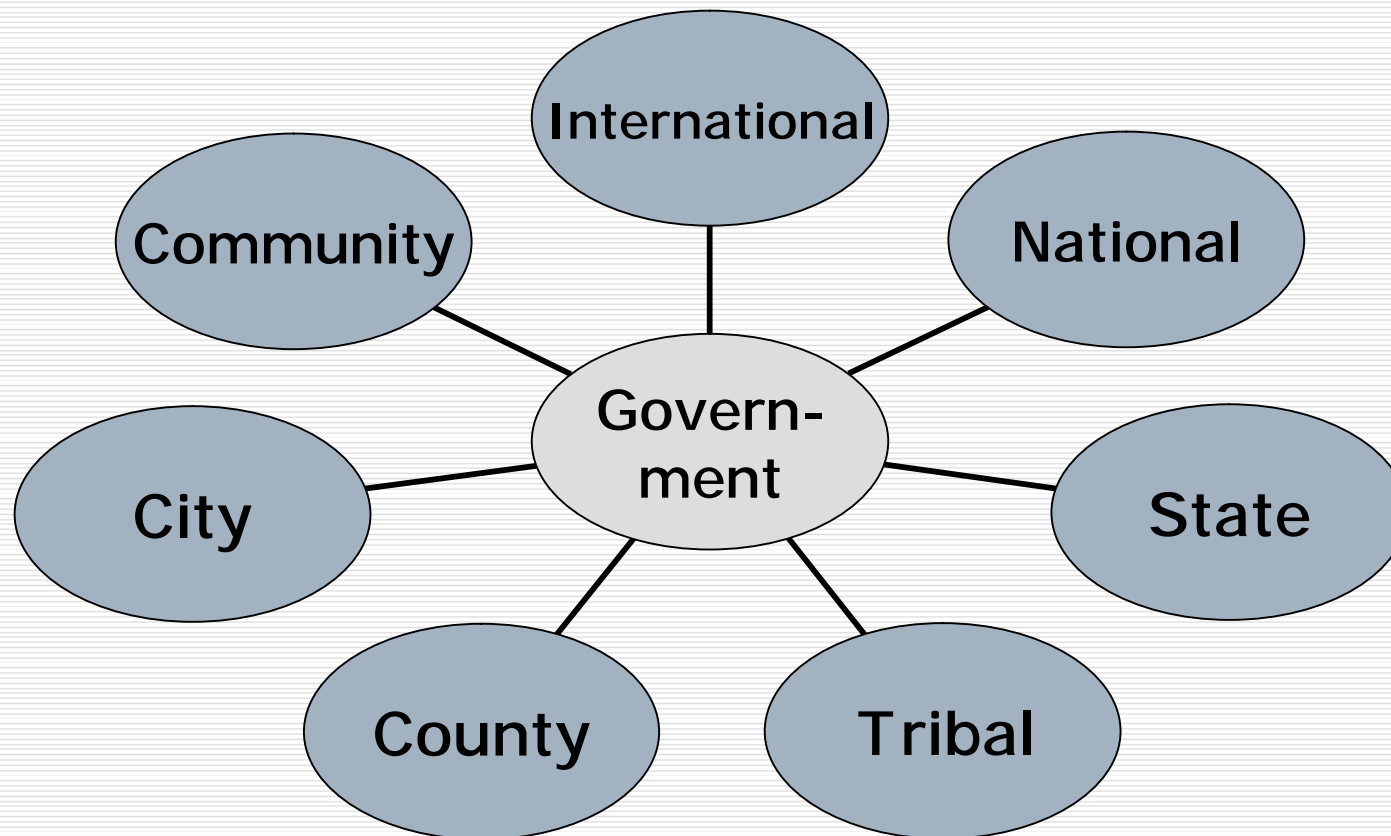
Laws pervade emergency responses at every level of government:

- They determine what constitutes a public health- or other type emergency
- They help create the infrastructure through which emergencies are detected, prevented, and addressed
- They authorize the performance (or nonperformance) of various emergency responses by a host of actors
- They determine the extent of responsibility for potential or actual harms that arise during emergencies

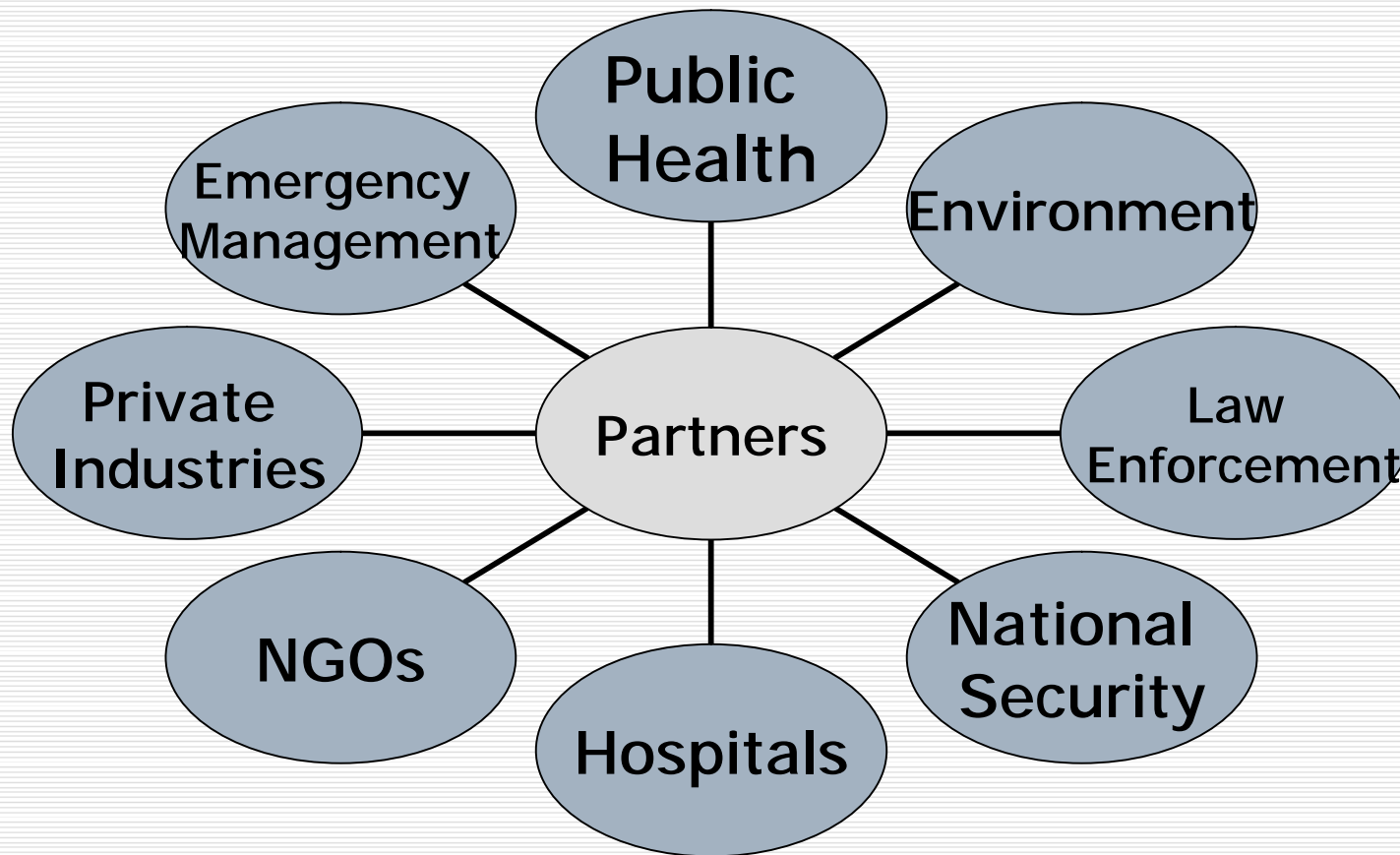
Assessing the Legal Environment in Emergencies



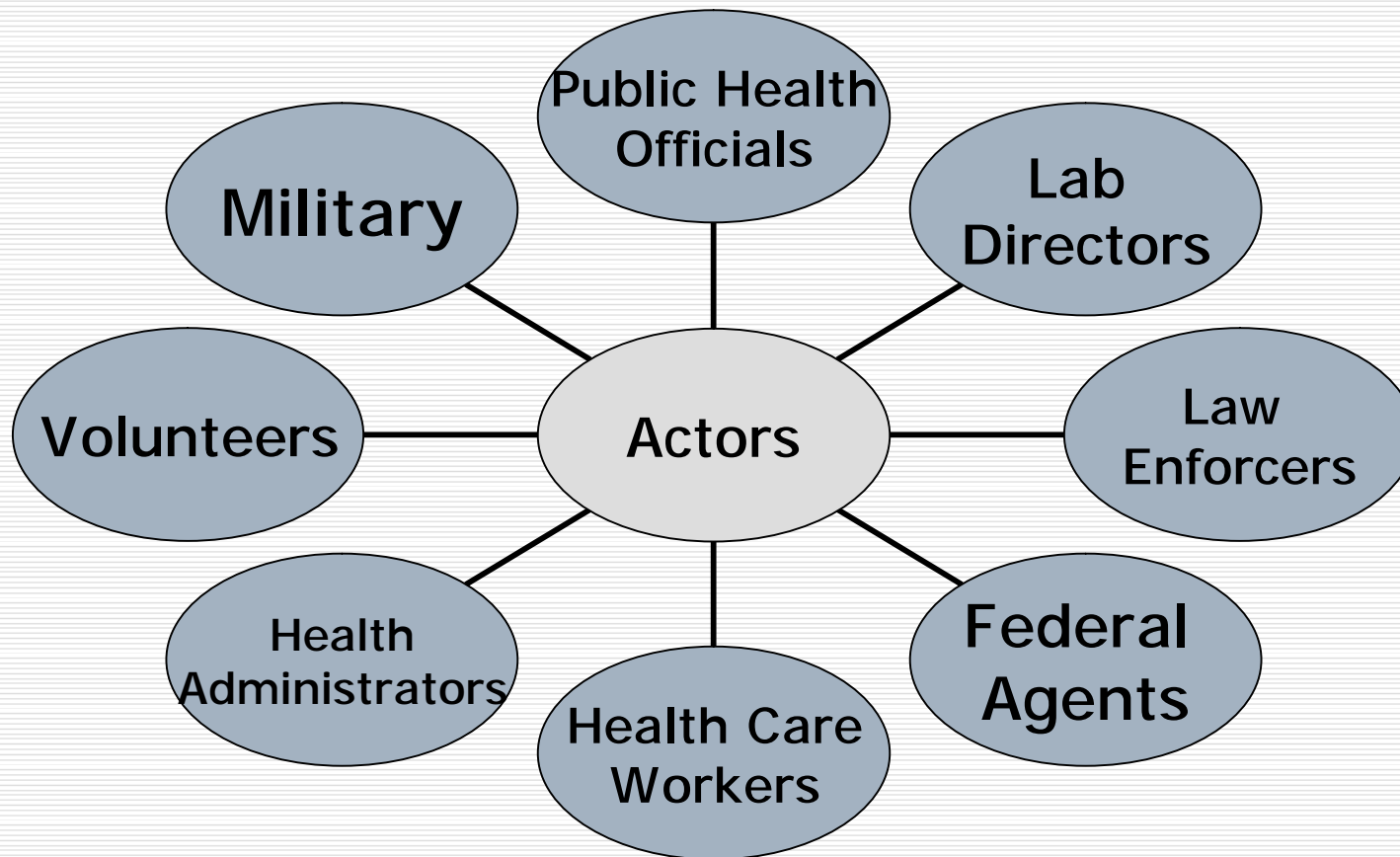
The Convergence of Governments During Emergencies



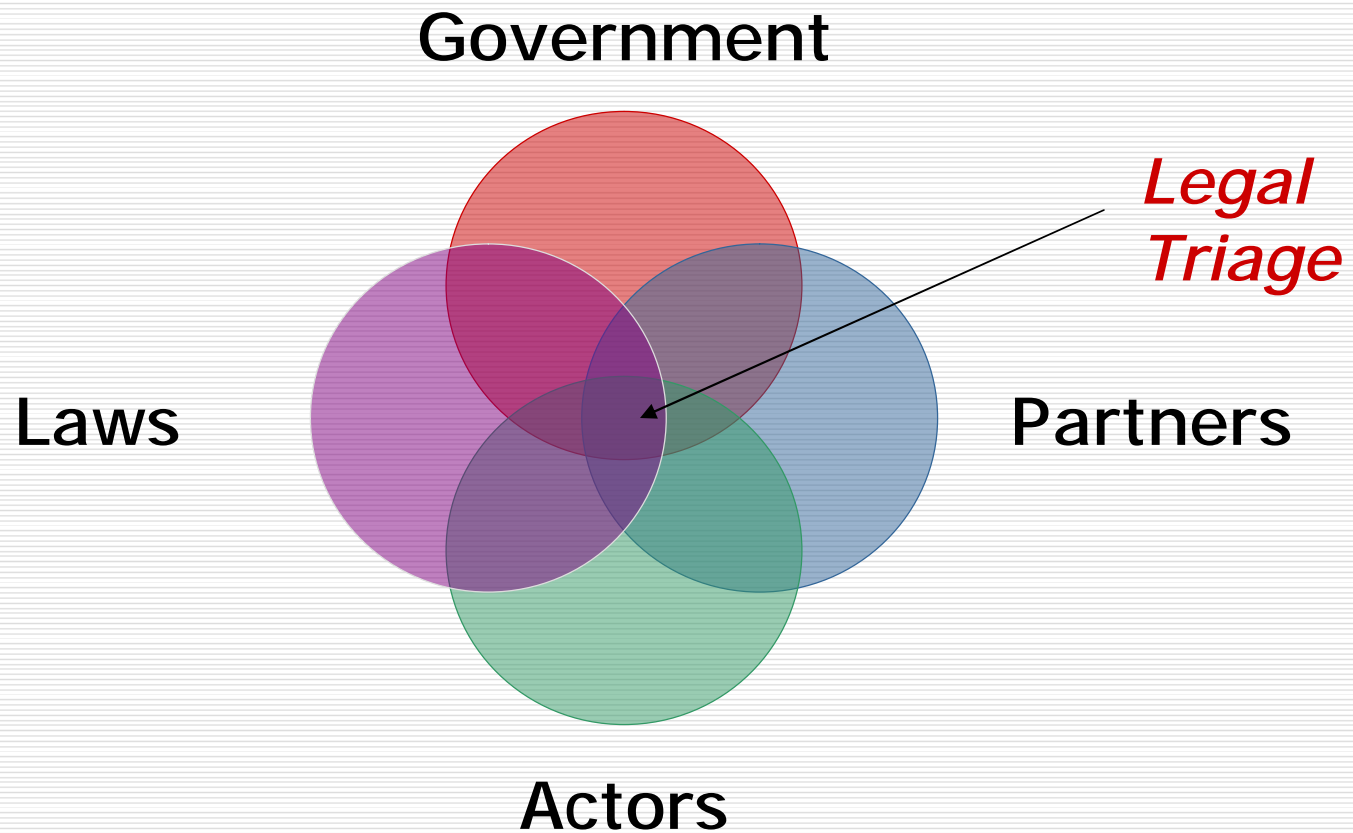
The Convergence of Partners During Emergencies



The Convergence of Specific Actors During Emergencies



Legal Triage During Emergencies



Legal Triage During Emergencies

Legal triage refers to:

the efforts of legal actors and others to construct a favorable legal environment through a prioritization of issues and solutions that facilitate public health responses during emergencies.

Legal Triage During Emergencies

Legal actors must be prepared to:

- **Assess and monitor changing legal norms** during emergencies;
- **Identify legal issues** that may facilitate or impede public health responses as they arise;
- **Develop innovative, responsive legal solutions** to reported barriers to public health responses;
- **Explain legal conclusions** through tailored communications to planners and affected persons; and
- **Revisit the utility, efficacy, and ethicality** of legal guidance.

Declared States of Emergency

Once an emergency has been declared, the legal landscape changes.

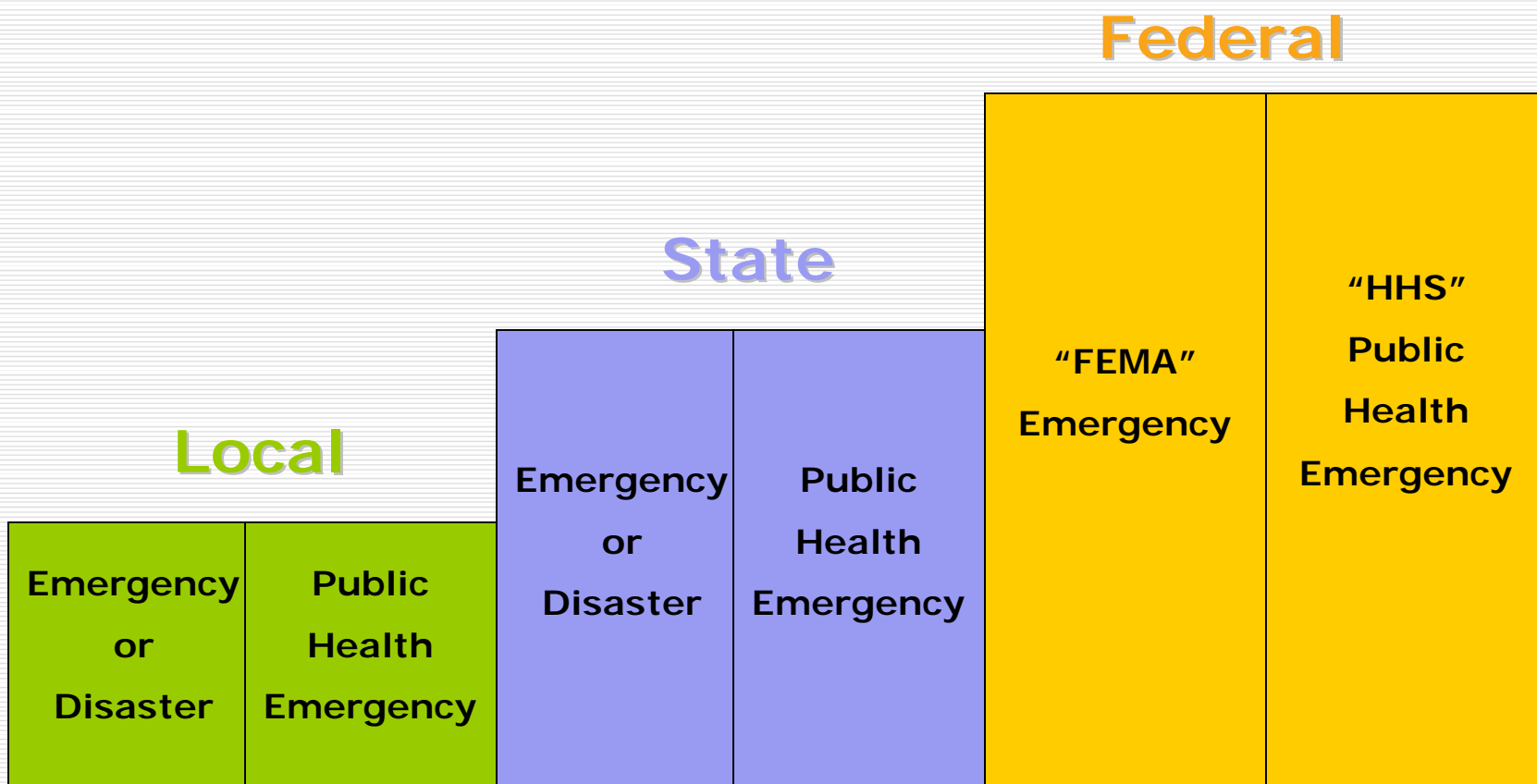


Emergency Declarations

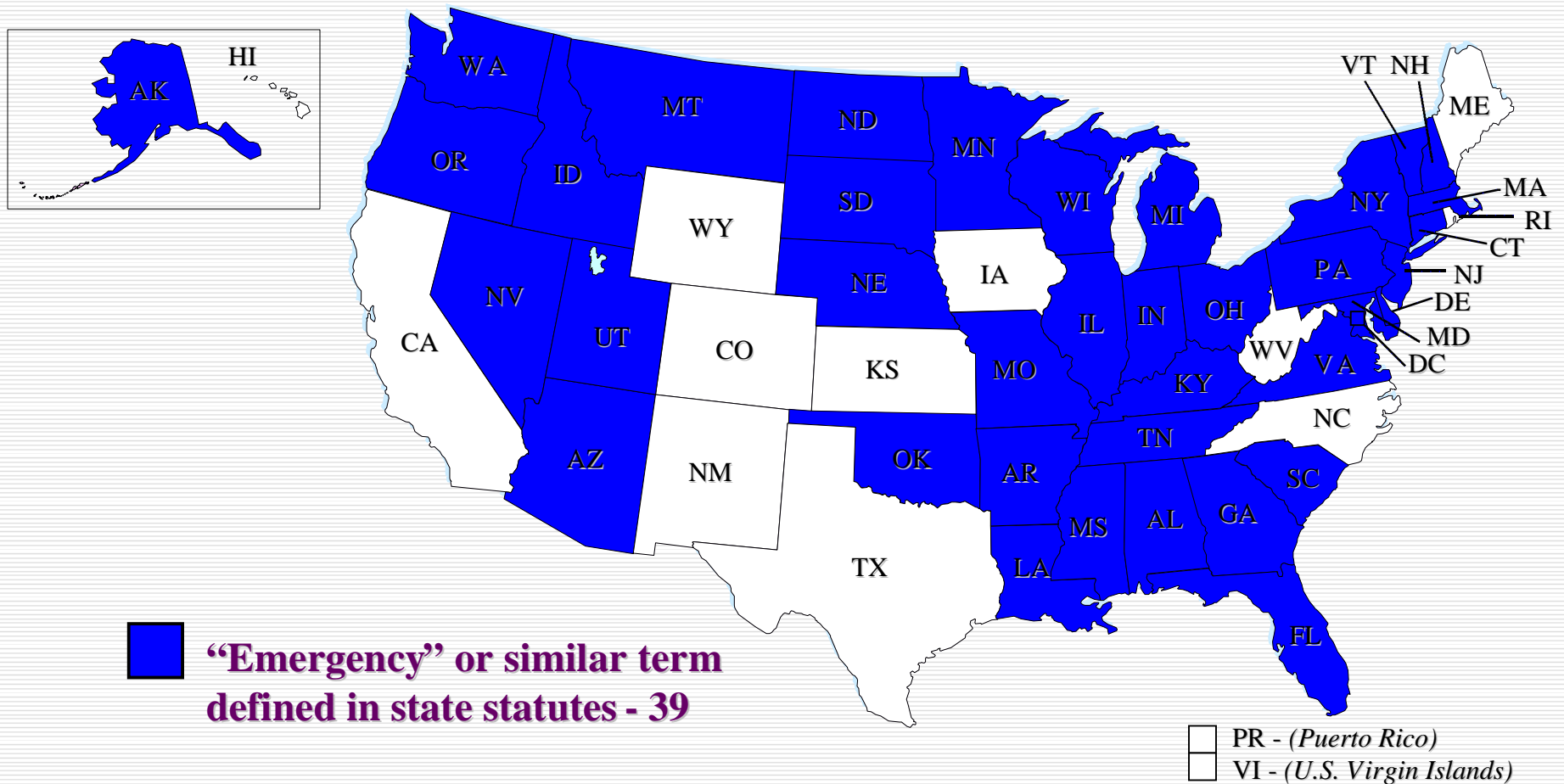
How the legal landscape changes depends on the type of emergency declared



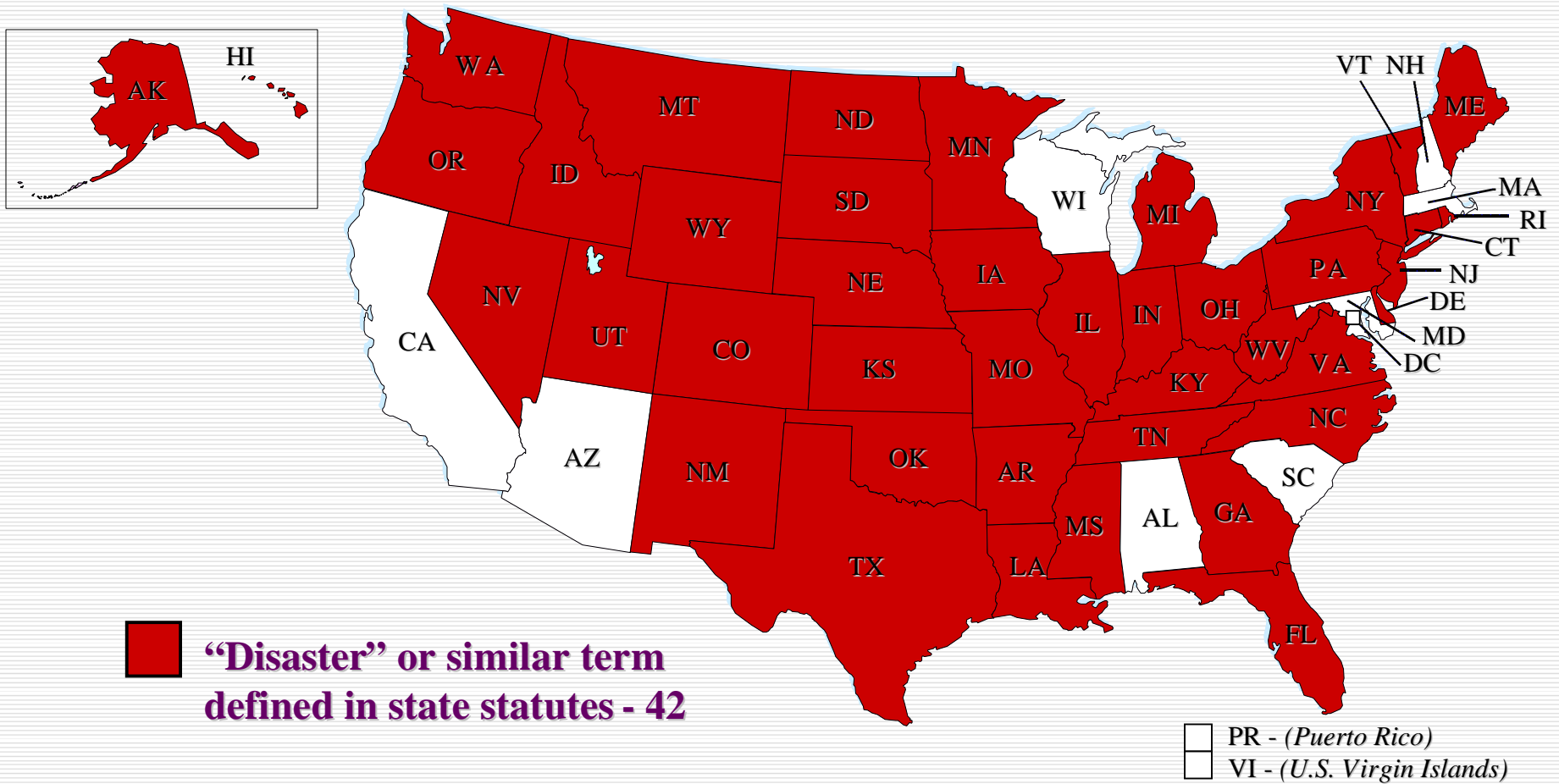
Multiple Levels of Emergency Declarations



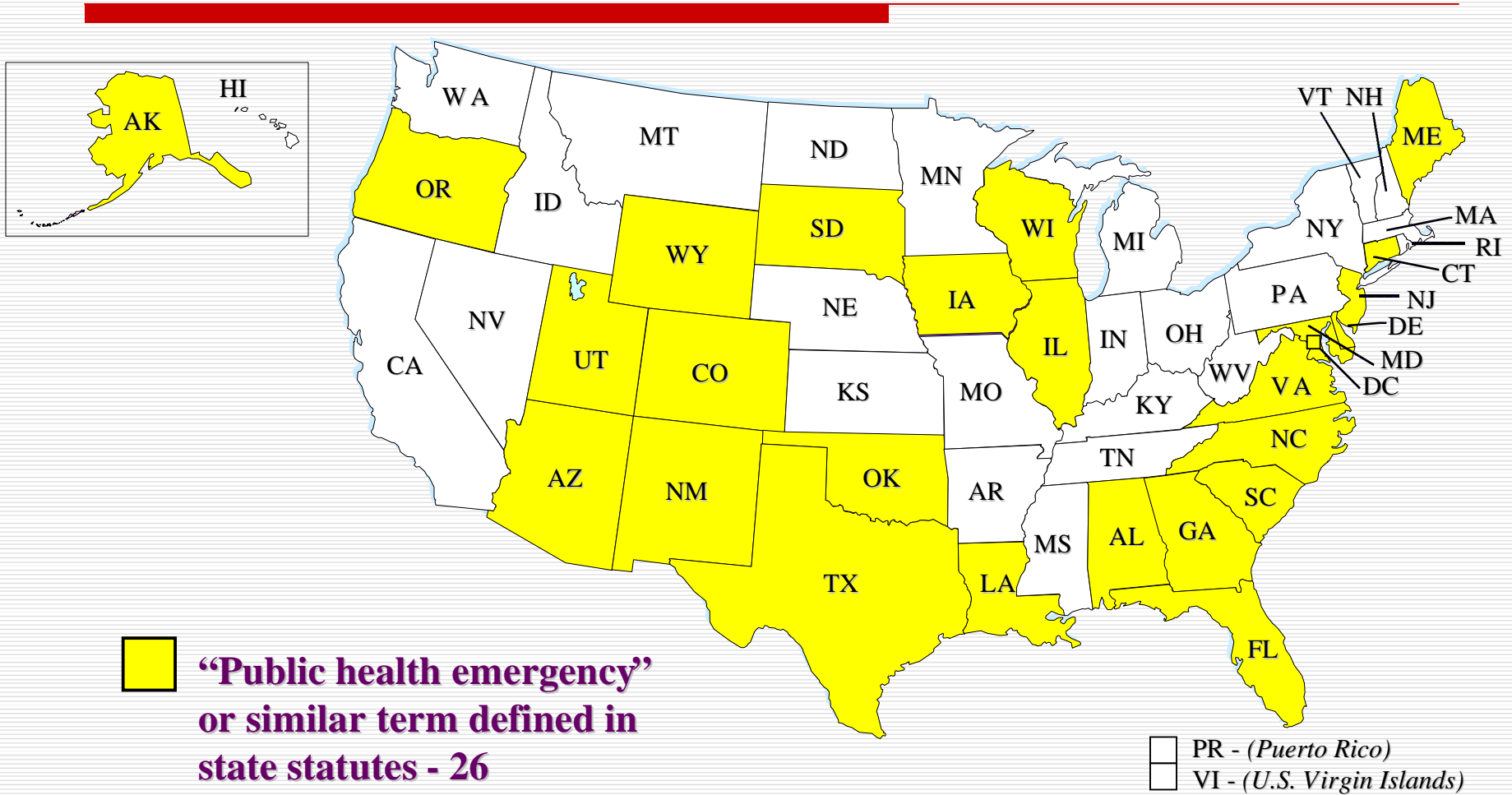
States That Define "Emergency"



States That Define "Disaster"



States That Define "Public Health Emergency"



“Public Health Emergency” Defined - MSEHPA

- **“Public health emergency:”**

An occurrence or imminent threat of an illness or health condition that (1) is believed to be caused by any of the following:

Ø *Bioterrorism*

Ø *Natural disaster*

Ø *Appearance of a novel or previously controlled or eradicated infectious agent or biological toxin*

Ø *Chemical attack or accidental release*

Ø *Nuclear attack or accident; and*

Model State Emergency Health Powers Act (MSEHPA)

(2) poses a high probability of any of the following harms occurring in a large number of the affected population:

Ø Death

Ø Serious or long-term disability

Ø Widespread exposure to infectious or toxic agent posing significant risk of substantial future harm

The Model State Emergency Health Powers Act (MSEHPA)

Individuals are bestowed special protections and entitlements



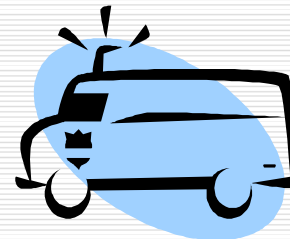
Government is vested with specific, expedited powers to facilitate emergency responses



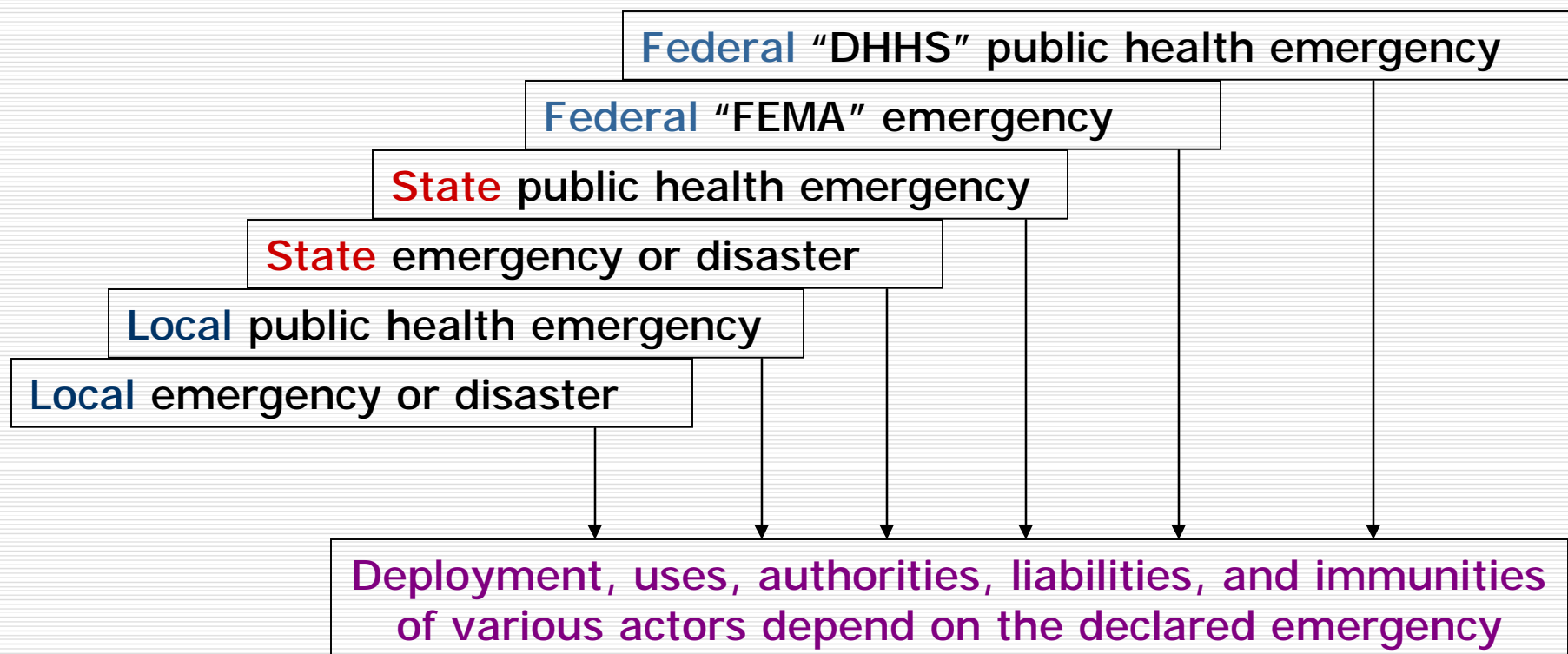
State medical licensure requirements may be waived



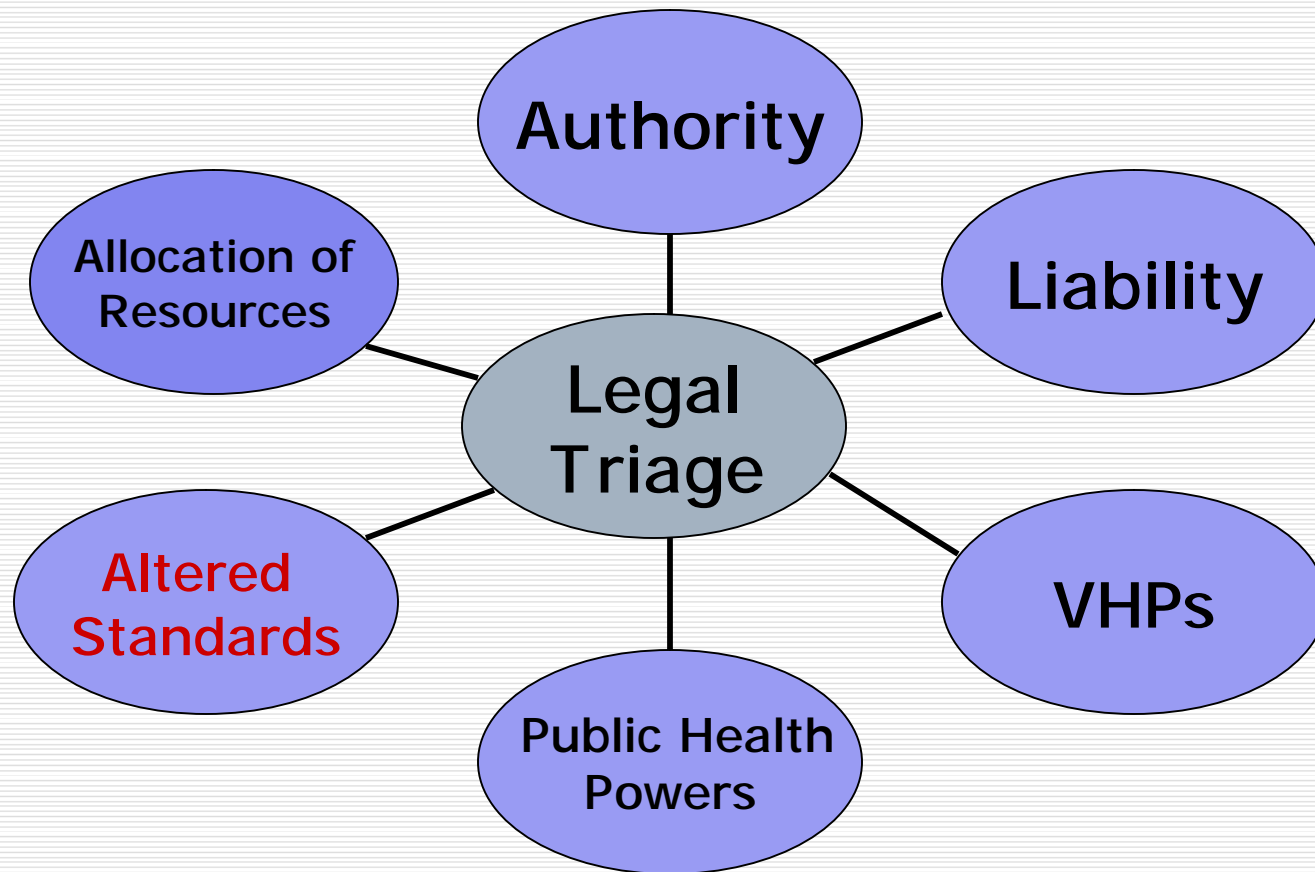
Responders may be protected from civil liability



Multiple Levels of Emergency Declarations



The Proliferation of Emergency Issues During Legal Triage



Standards of Care - Defined

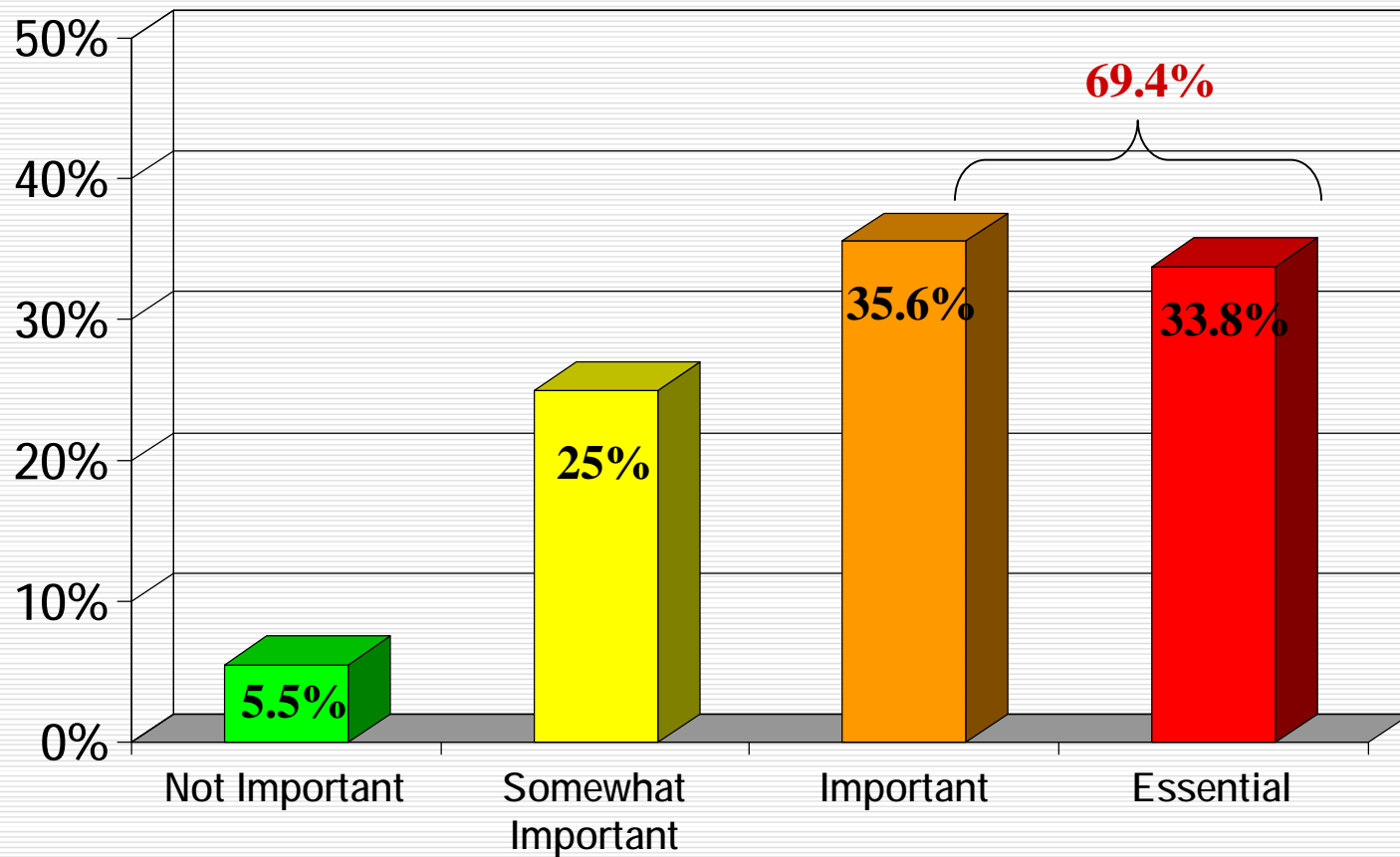
- q **“Medical standards of care”** refer generally to the type and level of medical care required in specific circumstances via professional norms, accreditation, or other requirements.
- q **“Legal standards of care”** refer to the amount of skill that a medical practitioner should exercise in particular circumstances based on reasonable and common practice in medical care.

Standards of Care - Defined

- q Breaches of **legal standards of care** may lead to liability if:
 - q The actor has a duty to provide care;
 - q Breach is intentional or negligent;
 - q Harm is proximately caused by the breach; and
 - q Breach results in damages.

APHA Survey on Volunteer Health Practitioner Legal Issues

Civil Liability – As a potential volunteer, how important to you is your immunity from civil lawsuits whether to volunteer during emergencies?

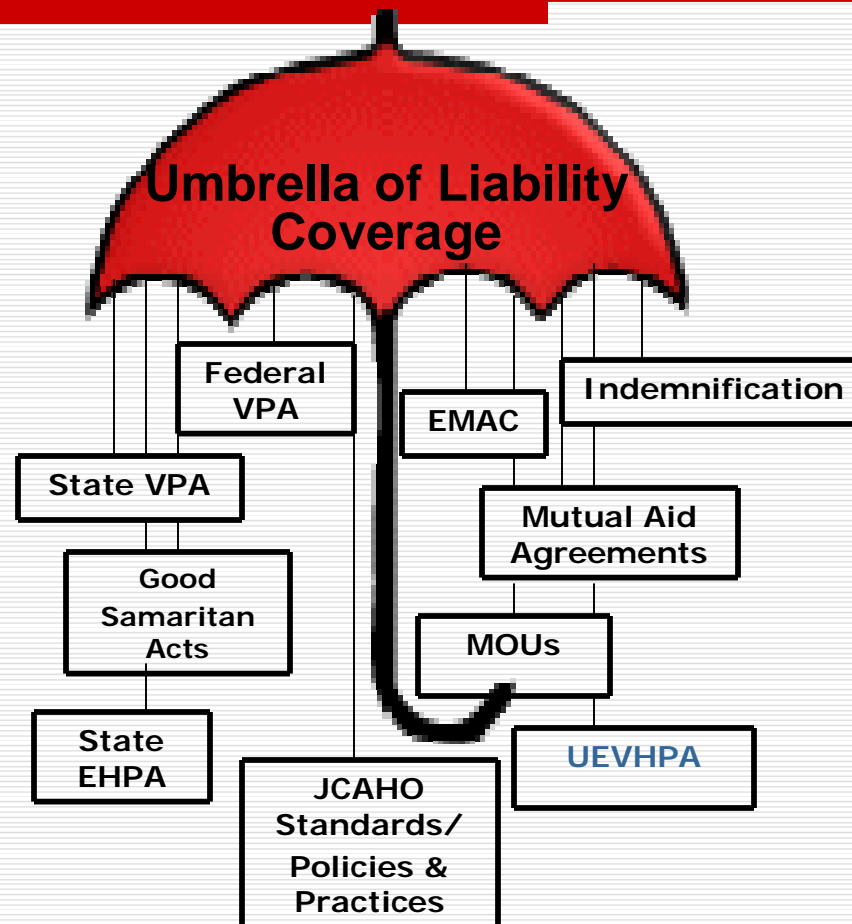


Data as of October 5, 2006

Risks of Civil Liability



Civil Liability Protections



UEVHPA

- The Uniform Emergency Volunteer Health Practitioners Act of 2007
- Developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL)
- Addresses key issues of registration, licensure portability, civil liability, standards of care, and workers' compensation for VHPs
- Available at www.uevhpa.org

Standards of Care – Take Home Messages



The line of liability is intrinsically tied to changing standards of care during emergencies which may vary across jurisdictions

Predicting/determining where the line is drawn in advance is key, but flexibility inherent in emergency preparedness must be considered

Additional Resources

- ESAR-VHP Legal and Regulatory Issues Report & Checklist
- ESAR-VHP Legal and Regulatory Issues Report Annex: Local Emergency Laws - 2009 (Forthcoming)
- **Hurricanes Katrina and Rita**: Legal Issues Concerning VHPs Compendium – October 2005
- Principles and Practice of Legal Triage During Public Health Emergencies. *NYU Annual Survey of American Law* 2009
- Available at the Center's website: www.publichealthlaw.net
- *Thank you!*