

Exploring Gubernatorial Powers to Suspend Statutes and Regulations in Emergencies

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Introductions



Disclaimer

- The contents of this presentation have not been formally disseminated by the Centers for Disease Control and Prevention (CDC) and should not be construed to represent any agency determination or policy.
- These materials are for instructional use only and are not intended as a substitute for professional legal or other advice.
- Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.

Presenters

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What are public health emergency powers?



Public health powers in emergencies

- Emergency legal systems can establish procedures to protect the public
- Often, the powers are triggered by the declaration of an emergency
 - State disaster or public health emergency declaration
 - Local disaster or public health emergency declaration



Emergency powers include the power to—

- Exercise broad emergency authorities to protect people and property
- Procure personnel and resources
- Suspend statutes or regulations, such as scope-of-practice or dispensing laws, that might inhibit the response

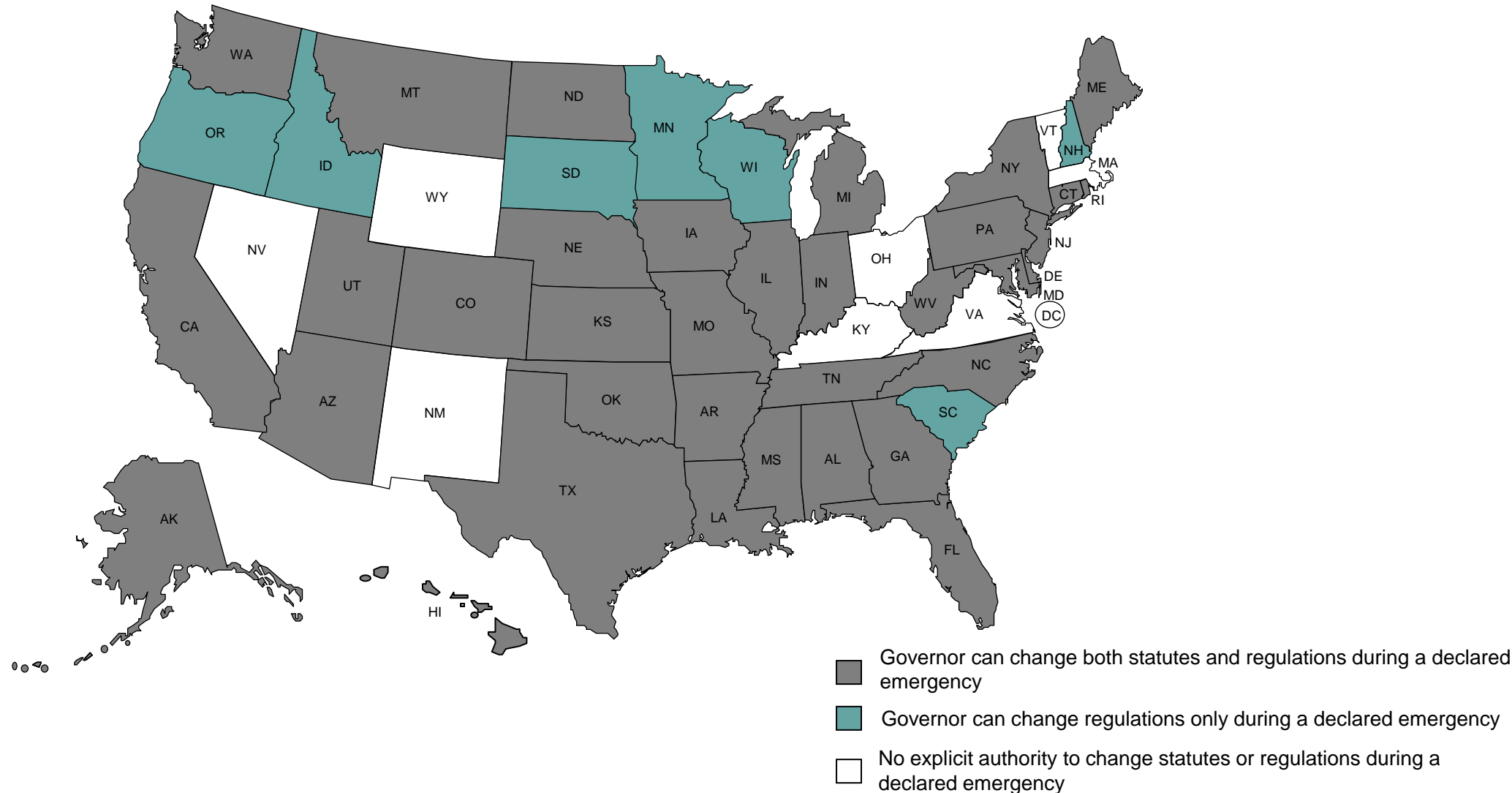
An Assessment of State Laws Providing Gubernatorial Authority to Remove Legal Barriers to Emergency Response



Legal epidemiology methodology to assess emergency suspension powers

- Assessment led by Kelly Thompson* and Nicolas Anderson† on June 21, 2017
- Database: Thomson Reuters Westlaw
- Scope: statutes and regulations in all 50 states and the District of Columbia that indicated the types of emergency powers granted to governors during a declared emergency to alter a state's laws
 - Search terms included: “emergency powers,” “governor,” “authority,” “suspend,” “emergency,” and “disaster”
- Compiled laws were uploaded into <https://lawatlas.org/>
 - Two raters applied, discussed, and validated codes; interrater agreement was achieved among the 2 raters

States that explicitly authorize governors to change statutes or regulations during a declared emergency



How have governors used these powers?

■ Natural disasters

- In August 2017, the governor of Texas used his emergency suspension powers to respond to then–Tropical Depression Harvey
- Suspended “any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster . . . *upon written approval of the Office of the Governor*”
- Included the caveat that “to the extent that the enforcement of any state statute or administrative rule regarding **contracting or procurement** would impede any state agency's emergency response that is necessary to protect life or property, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster”

How have governors used these powers?

■ Infectious diseases

- During the 2018 seasonal flu epidemic, the governor of New York declared an emergency to ensure adequate distribution of flu vaccine to children in the state
- Suspended state statutes and regulations—which normally prohibit pharmacists from vaccinating children—to allow pharmacists already authorized to administer seasonal flu vaccines to adults to also vaccinate “individuals between six months and 18 years of age”
- The same action was taken during the 2012–2013 seasonal flu epidemic and the 2009 H1N1 influenza pandemic

How have governors used these powers?

■ Opioid epidemic

- In January 2018, the governor of Pennsylvania suspended statutes to combat Pennsylvania's opioid crisis
- The governor authorized “the suspension of relevant regulatory statutes that agencies under my jurisdiction are authorized by law to administer or enforce as may be necessary to respond to the opioid crisis”
- The suspension included the procedural requirement that “[a]ny regulatory statute that agencies under my jurisdiction desire to be suspended must be reviewed by the Governor’s Office of General Counsel, and filed with the Opioid Unified Coordination Group”

Conclusions

- Understanding the scope of governors' emergency powers to remove legal barriers during declared emergencies is crucial for states' legal preparedness and can inform planners on the legal feasibility of strategies to prepare for large-scale emergencies
- Governors will be able to adequately minimize the impact of legal barriers to emergency response only after the legalities and realities of changing law during a disaster are incorporated into state, interstate, and national preparedness and response activities
- For planners and policymakers in jurisdictions that lack explicit authority for the governor to broadly change statutes or regulations during a declared emergency, it is vital that alternative means of removing legal barriers be considered
- If no such alternative waivers exist, emergency planners may need to ensure that plans and exercises adequately anticipate potential legal barriers and develop strategies to minimize their detrimental impact on response activities



PREPARING FOR A PUBLIC HEALTH EMERGENCY TRIBAL LEGAL PREPAREDNESS PROJECT

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Training Modules

Four modules were developed by the TLPP:

- What Is Legal Preparedness And Why Is It Important To Tribal Nations
- Jurisdictional Issues And Using The Law To Enhance Cross Jurisdictional Collaboration
- Disaster Declarations
- Best Practices




The modules provide an introduction to legal preparedness that can be used to educate Tribal leadership, discuss how the law can be used to achieve cross-jurisdictional coordination, and explain the disaster declaration mechanism, including the new direct Tribal disaster declaration process. The last module provides an array of best practices shared by Tribal Nations, including audio and video recordings of Tribal public health/emergency management practitioners, so that Tribal Nations are sharing their success stories and helping other Tribes.

<http://www.tlpp.pitt.edu/>

Public Health Emergency Law Online Training

Management of public health emergencies requires effective use of legal authorities. In these incidents, public health and emergency management responses must be coordinated under a complex set of federal, state, tribal, and local laws. CDC's Public Health Emergency Law course prepares state, tribal, local, and territorial practitioners to make informed legal decisions related to emergency preparedness and response activities in their jurisdictions.

PHEL consists of three [competency-based](#) units and covers legal issues to consider before, during, and after public health emergencies. Each interactive unit takes about 40 minutes to complete.

- [Unit 1—Introduction to Emergency Management Systems Preparedness and Response](#) 
Covers the legal underpinnings of emergency management systems
- [Unit 2—Emergency Powers: Protection of Persons, Volunteers, and Responders](#) 
Describes legal considerations for personnel responding to emergencies
- [Unit 3—Emergency Powers: Management and Protection of Property and Supplies](#) 
Examines considerations surrounding materials and property during public health emergencies




Ohio National Guard members load drinking water onto a helicopter for delivery to Ocean Springs, Mississippi, after Hurricane Katrina disrupted water supplies along the Mississippi Gulf Coast.

Law and Epidemic Emergency Preparedness (LEEP) Online Training

State, tribal, local, and territorial health department staff, emergency planners and managers, first responders, and anyone working in response to an epidemic often face complex legal issues when working to stop the spread of a highly infectious communicable disease.

CDC's free online Law and Epidemic Emergency Preparedness (LEEP) training covers provisions and concepts applicable to epidemic response, including various challenges faced during the 2014 Ebola response, and applies them to future infectious disease emergency response planning. LEEP examines legal underpinnings of emergency preparedness and response systems, what actions are authorized, and how to minimize legal barriers to an effective large-scale communicable disease response.

[Go to LEEP Training](#) 

LEEP consists of eight units. Units 1, 2, and 3 provide participants with a foundation in legal issues surrounding law and epidemic emergency preparedness, and units 4, 5, 6, 7, and 8 cover specific situations you may encounter during an epidemic.



www.cdc.gov/phlp/publications/topic/trainings/leep.html

Thank you!

- Special thanks to Kelly Thompson, Akshara Narayan Menon, Nicholas Anderson, Matthew Penn, and Lisa M. Koonin
- For questions, contact Gregory Sunshine (gsunshine@cdc.gov)
- View an interactive map of the assessment at <https://lawatlas.org/datasets/emergency-powers>
- To cite this research and learn more visit:
 - Gregory Sunshine, Kelly Thompson, Akshara Narayan Menon, Nicholas Anderson, Matthew Penn, and Lisa M. Koonin. *Health Security*. Apr 2019. 17(2): 156-161. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6476686/>

For more information, contact CDC
1-800-CDC-INFO (232-4636)
TTY: 1-888-232-6348 www.cdc.gov

The findings and conclusions in this report are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention.



California Emergency Declarations

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Disclaimer

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Objectives



Review the legal authorities of State officials to issue and terminate emergency declarations and orders.

Identify examples of mitigation of legal barriers during declared emergencies.

Authority for emergency declarations



Two types of Authorities for Emergency Declarations in California

Public Emergencies: CA
Emergency Services Act
(CESA) (Gov. Code, §
8550 et seq.)

- State of War – With or without Governor proclamation
- State of Emergency – Governor
- Local Emergency – Local Governing Board

Health Emergencies:
CA Health & Saf. Code,
§ 101080

- State Director of Public Health
- Local Health Officer

CA Emergency Services Act (CESA)

Gov. Code, § 8550 et seq.



Proclaimed Emergencies under the CESA (Gov. Code, § 8550 et seq.)

- ▶ The authority of the Governor to issue emergency declarations is granted by the Legislature.



What is a State of Emergency

- ▶ “‘State of emergency’ means the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions such as ... fire, flood, storm, epidemic ... which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat ...” (Gov. Code, § 8558(b).)

Governor's Emergency Authority

- ▶ During a state of emergency the **Governor shall**, to the extent he deems necessary, **have complete authority over all agencies of the state government and the right to exercise** within the area designated **all police power** vested in the state by the Constitution and laws of the State of California ... (Gov. Code, § 8627.)

Governor's Authority to suspend statutes or rules

- ▶ During a state of emergency the Governor may **suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency . . . where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency.** (Gov. Code, § 8571.)

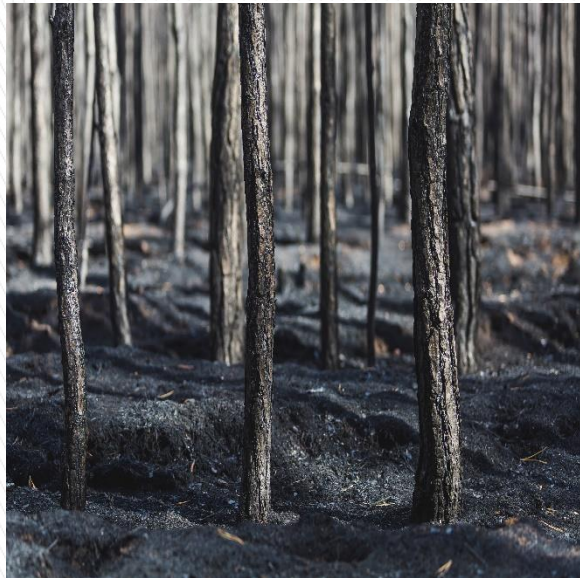
Other Powers pursuant to the Emergency Services Act

- ▶ The Governor may:
 - Expend any appropriation for support of the CESA.
 - Make, amend and rescind orders and regulations. The orders and regulations shall have the force and effect of law.*
 - Plan for, procure, and pre-position supplies, medicines, materials, and equipment.
 - Gov. Code, § 8550 et seq.

Other Powers Pursuant to the Emergency Services Act Cont'

- Ascertain the requirements for necessities of life.
- Commandeer or utilize any private property or personnel and pay the reasonable value thereof.
- Use and employ any of the property, services, and resources of the state.
- Gov. Code, § 8550 et seq.

California Examples



Wildfires




Hepatitis A Outbreak of 2017

Top 20 Largest Wildfires

Top 20 Largest California Wildfires

FIRE NAME (CAUSE)	DATE	COUNTY	ACRES	STRUCTURES	DEATHS
1 AUGUST COMPLEX (Under Investigation)	August 2020	Mendocino, Humboldt, Trinity, Tehama, Glenn, Lake, & Colusa	1,032,648	935	1
2 DIXIE (Under Investigation)*	July 2021	Butte, Plumas, Lassen, & Tehama	922,192	1,282	1
3 MENDOCINO COMPLEX (Under Investigation)	July 2018	Colusa, Lake, Mendocino & Glenn	459,123	280	1
4 SCU LIGHTNING COMPLEX (Under Investigation)	August 2020	Stanislaus, Santa Clara, Alameda, Contra Costa, & San Joaquin	396,624	222	0
5 CREEK (Under Investigation)	September 2020	Fresno & Madera	379,895	853	0
6 LNU LIGHTNING COMPLEX (Under Investigation)	August 2020	Napa, Solano, Sonoma, Yolo, Lake, & Colusa	363,220	1,491	6
7 NORTH COMPLEX (Under Investigation)	August 2020	Butte, Plumas & Yuba	318,935	2,352	15
8 THOMAS (Powerlines)	December 2017	Ventura & Santa Barbara	281,893	1,063	2
9 CEDAR (Human Related)	October 2003	San Diego	273,246	2,820	15
10 RUSH (Lightning)	August 2012	Lassen	271,911 CA / 43,666 NV	0	0
11 RIM (Human Related)	August 2013	Tuolumne	257,314	112	0
12 ZACA (Human Related)	July 2007	Santa Barbara	240,207	1	0
13 CARR (Human Related)	July 2018	Shasta County & Trinity	229,651	1,614	8
14 MATILIJIA (Undetermined)	September 1932	Ventura	220,000	0	0
15 CALDOR (Under Investigation)*	August 2021	Alpine, Amador, & El Dorado	217,569	996	0
16 WITCH (Powerlines)	October 2007	San Diego	197,990	1,650	2
17 KLAMATH THEATER COMPLEX (Lightning)	June 2008	Siskiyou	192,038	0	2
18 MONUMENT (Lightning)*	August 2021	Trinity	185,919	50	0
19 MARBLE CONE (Lightning)	July 1977	Monterey	177,866	0	0
20 LAGUNA (Powerlines)	September 1970	San Diego	175,425	382	5

There is no doubt that there were fires with significant acreage burned in years prior to 1932, but those records are less reliable, and this list is meant to give an overview of the large fires in more recent times.
 This list does not include fire jurisdiction. These are the Top 20 regardless of whether they were state, federal, or local responsibility.
 *Numbers not final.

 9/8/2021

Top 20 Most Destructive

Top 20 Most Destructive California Wildfires

FIRE NAME (CAUSE)	DATE	COUNTY	ACRES	STRUCTURES	DEATHS
1 CAMP (Powerlines)	November 2018	Butte	153,336	18,804	85
2 TUBBS (Electrical)	October 2017	Napa & Sonoma	36,807	5,636	22
3 TUNNEL - Oakland Hills (Rekindle)	October 1991	Alameda	1,600	2,900	25
4 CEDAR (Human Related)	October 2003	San Diego	273,246	2,820	15
5 NORTH COMPLEX (Under Investigation)	August, 2020	Butte, Plumas, & Yuba	318,935	2,352	15
6 VALLEY (Electrical)	September 2015	Lake, Napa & Sonoma	76,067	1,955	4
7 WITCH (Powerlines)	October 2007	San Diego	197,990	1,650	2
8 WOOLSEY (Under Investigation)	November 2018	Ventura	96,949	1,643	3
9 CARR (Human Related)	July 2018	Shasta County, Trinity	229,651	1,614	8
10 GLASS (Undetermined)	September 2020	Napa & Sonoma	67,484	1,520	0
11 LNU LIGHTNING COMPLEX (Under Investigation)	August 2020	Napa, Solano, Sonoma, Yolo, Lake, & Colusa	363,220	1,491	6
12 CZU LIGHTNING COMPLEX (Lightning)	August 2020	Santa Cruz, San Mateo	86,509	1,490	1
13 NUNS (Powerline)	October 2017	Sonoma	54,382	1,355	3
14 DIXIE (Under Investigation)*	July 2021	Butte, Plumas, Lassen, & Tehama	922,192	1,282	1
15 THOMAS (Powerline)	December 2017	Ventura & Santa Barbara	281,893	1,063	2
16 OLD (Human Related)	October 2003	San Bernardino	91,281	1,003	6
17 CALDOR (Under Investigation)	September 2021	Alpine, Amador, & El Dorado	217,569	996	0
18 JONES (Undetermined)	October 1999	Shasta	26,200	954	1
19 AUGUST COMPLEX (Under Investigation)	August 2020	Mendocino, Humboldt, Trinity, Tehama, Glenn, Lake, & Colusa	1,032,648	935	1
20 BUTTE (Powerlines)	September 2015	Amador & Calaveras	70,868	921	2

Structures include homes, outbuildings (barns, garages, sheds, etc) and commercial properties destroyed.

This list does not include fire jurisdiction. These are the Top 20 regardless of whether they were state, federal, or local responsibility.

*Numbers not final



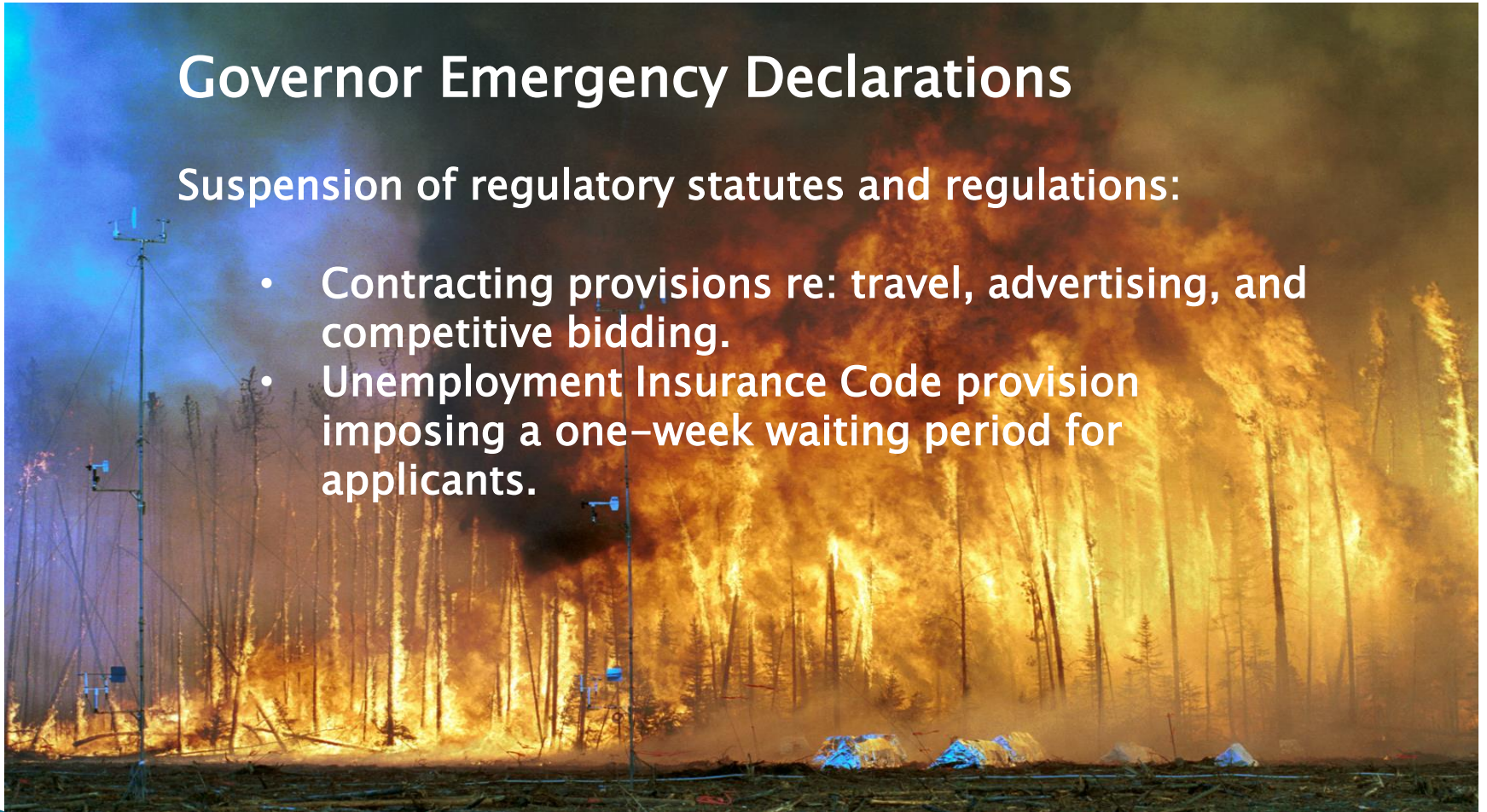
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California Wildfires

Governor Emergency Declarations

Suspension of regulatory statutes and regulations:

- Contracting provisions re: travel, advertising, and competitive bidding.
- Unemployment Insurance Code provision imposing a one-week waiting period for applicants.



Wildfire Waivers Cont'

- ▶ Fees for replacement of driver's identification, vehicle registration, or certificate of title for lost records.
- ▶ Fees for replacement of vital records (birth, death marriage, dissolution).

Wildfire Waivers Cont'

- ▶ Delegate authority to Executive Departments to issue waivers.
 - Shall be posted on the Departments' websites.
 - Shall only be in effect so long as necessary to address the direct impacts of the fires identified in the Order.

Wildfire Waivers Cont'

- ▶ In order to ensure hospitals, clinics, and other health facilities remain open, the **Director of the Department of Public Health may waive statutory licensing requirements*** and accompanying regulations with respect to any ... health facility ... that is impacted by the fires.**
 - Any waiver shall include *alternative measures that*, under the circumstances, will *allow the facilities to remain open* while protecting public health and safety.
 - Any facilities being granted a waiver shall be established and *operated in accordance with their disaster and mass casualty plan*.

Wildfire Waivers Cont'

- ▶ ***Authority for the Director of the Department of Social Services to waive statutory provisions and accompanying regulations or written directives, with respect to the use, licensing or approval of facilities or homes within the Department's jurisdiction impacted by fires (assisted living, adult residential, child care, children's residential facilities, etc.).****

Wildfire Waivers Cont'

- ▶ In order to directly respond to the needs of behavioral health programs and facilities impacted by the fires, the **Director of the Department of Health Care Services** may waive licensing, certification, or approval requirements for such programs under its jurisdiction; and accompanying regulations, written standards, or information notices.*

EO N-13-21 August 20, 2021

- ▶ Suspended state statutes, rules, regulations, and requirements to the extent they would prevent, hinder, or delay the following activities:
 - a. Removal, storage, transportation, and disposal of hazardous and non-hazardous solid waste and debris*; and
 - b. Necessary restoration and rehabilitation of timberland, streams, rivers, and other waterways.

EO N-13-21

- ▶ Order applies to but is not limited to:
 - solid waste facility permits;
 - waste discharge requirements for storage and disposal;
 - emergency timber harvesting;
 - stream environment zones;
 - emergency construction activities;
 - and waste discharge requirements and/or Water Quality Certification for discharges of fill material or pollutants.



EO N-13-21

- ▶ **Boards, departments and offices within the California Environmental Protection Agency and the California Natural Resources Agency shall exercise their administrative discretion and expedite the granting of other authorizations, waivers or permits necessary for the removal, storage, transportation, and disposal of hazardous and nonhazardous debris resulting from the fires, and for other actions necessary for the protection of public health and the environment.**

EO N-13-21

- ▶ Consistent with applicable federal law, suspended work hour limitations, reinstatement, and waiting period for state staff.*
 - Waivers apply to both state and local government entities to ensure adequate staffing to appropriately respond to the wildfires**
- ▶ Waived the time limitations in provisions in the Penal Code*** prohibiting price gouging in times of emergency.****

EO N-13-21

- ▶ **Suspended provisions of the Revenue and Taxation Code requiring the filing of a statement under penalty of perjury setting forth the facts for a claim for relief as a result of a disaster, for three months after the due date of the return or payment.**
- ▶ **The Franchise Tax Board, the Board of Equalization, the Department of Tax and Fee Administration, and the Office of Tax Appeals shall use their administrative powers to provide impacted individuals and businesses with extensions for filing, audits, billing, notices, assessments, and relief from subsequent penalties and interest.**

EO N-13-21

- ▶ To allow counties time to reappraise the value of property to account for fire damage, waived the requirement in Revenue and Taxation Code* that homeowners file claims by February 10, 2022. Extended to June 1, 2022.
- ▶ Suspended the provisions of the Government Code** requiring state employees to obtain prior authorization for out-of-state travel >five days for employees who are required to travel to states bordering California to assist with fire response and recovery efforts.

EO N-14-21

- ▶ Any section of the Health and Safety Code* allowing the immediate removal of hazardous debris, shall apply to and include the actions of the U.S. EPA, FEMA, or any individual or entity performing work at their direction, as if those agencies were a political subdivision or state agency for all purposes related to this operation.

California Hepatitis A Outbreak



CA HepA Outbreak

- ▶ In March 2017, San Diego County noted a few cases back to Nov 2016.
- ▶ By April 2017, large numbers were beginning to be reported weekly, including deaths.
- ▶ Concurrently, in April 2017, Santa Cruz County noted an increase in cases, especially among institutionalized.



CA HepA Outbreak

- ▶ Most cases were among persons experiencing homelessness and/or using illicit drugs.*
- ▶ Spread person-to-person via fecal-oral contact.**
- ▶ Primary control of outbreak—vaccination***
 - Addressing sanitation also important in at-risk population.



HepA Outbreak – Peak

- ▶ Despite aggressive efforts, cases continued to increase.
- ▶ ~20 cases / week reported to CDPH
- ▶ San Diego, Santa Cruz, and Los Angeles counties declared outbreak status*
- ▶ Baseline rates for California: 146 (2014); 181 (2015)
 - Counts were upwards of 400+ and rising



Constrained Vaccine Supply

- ▶ Down to 1 manufacturer
- ▶ Large surge in demand → nationally and Internationally*
- ▶ CDC federal funding between fiscal years



Governor's Emergency Declaration

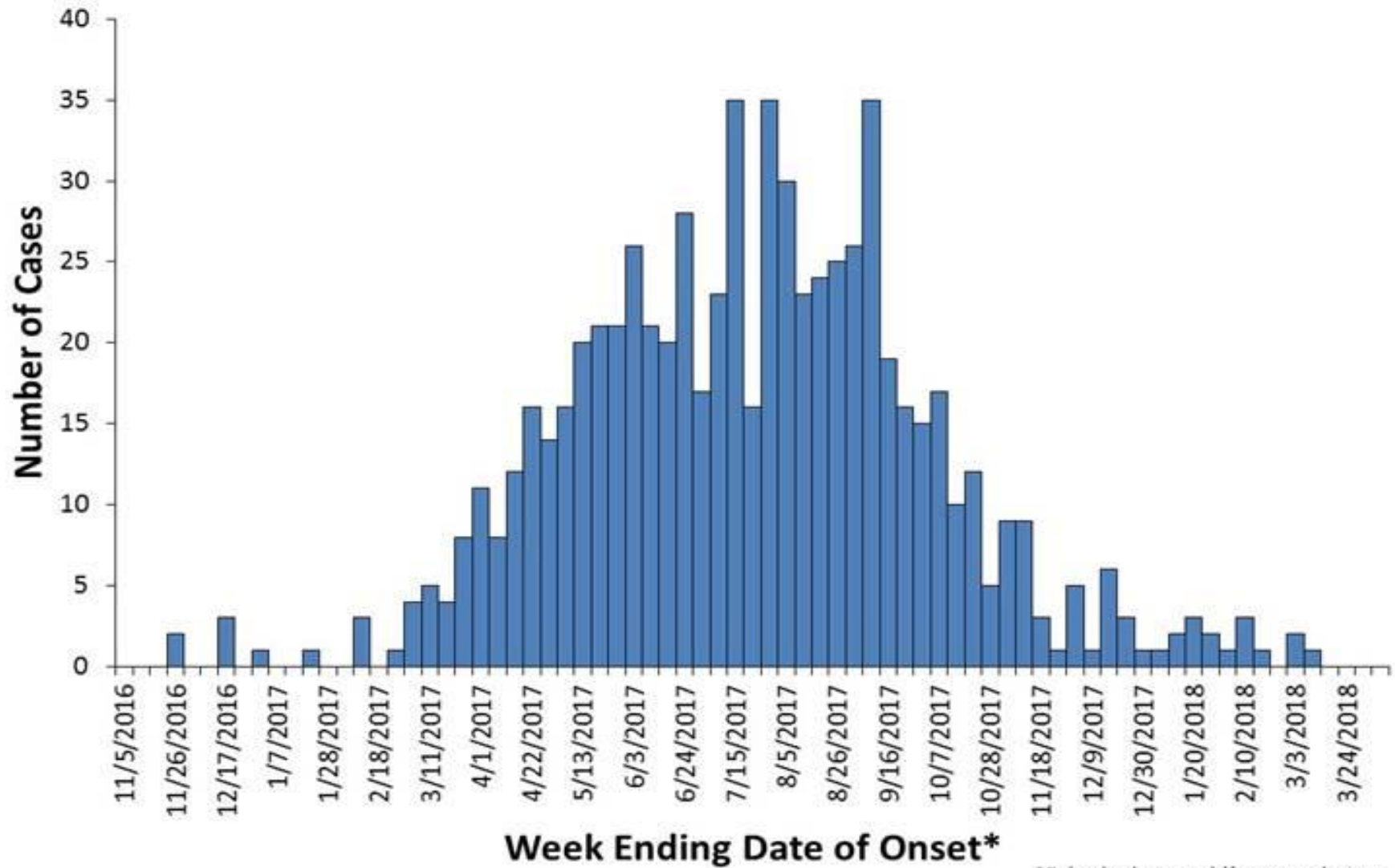
<https://www.gov.ca.gov/2017/10/13/news20018/>

- Issued October 13, 2017.
- Authorized CDPH to take all measures necessary to **obtain Hep A vaccines and prioritize** the vaccination of at-risk individuals in affected locations.
- All **drugs and medical supply stocks intended for wholesale distribution** were **held subject to the control and coordination of CDPH**.
- **Waived statutes prohibiting EMT-Paramedic licensees from administering vaccines:** Provided authority to EMT-Paramedic licensees in the affected locations to administer the appropriate vaccines to at-risk populations.



9/01/2021

Outbreak Related Cases of Hepatitis A, California



*Episode date used if onset unknown.

Governor's HepA Emergency Declaration Benefits



Provided critical stop-gap state funding to prevent interrupting the vaccine supply.



Allowed CDPH to control vaccine orders / supply and increase urgency with manufacturer.*



Required a coordinated effort between the State and LHDs to prioritize vaccine to those at highest risk.

Termination of Orders

- ▶ Whenever the state of emergency has been terminated, the orders and regulations shall be of no further force or effect. (Gov. Code, § 8567(b).)
- ▶ The Governor shall proclaim the termination of a state of emergency at the earliest possible date that conditions warrant. All of the powers granted the Governor ... with respect to a state of emergency shall terminate when the state of emergency has been terminated by
 - proclamation of the Governor or
 - by concurrent resolution of the Legislature declaring it at an end. (Gov. Code, § 8629.)

Questions?

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