

## Effective Public Health Emergency Laws













### A Legal Guide

When a public health emergency strikes, the legal framework establishes the rules for how government officials and other stakeholders should respond. Laws provide public health officials with a legal mandate and protocols to detect and respond to the public health threats. They define who must take what emergency actions, and what is and is not allowed. The best laws anticipate potential emergency scenarios and lay out a legally-sound plan of action for the government response.

When effective laws are not in place, the entire public health response is at risk. Officials may fail to act because they do not understand their roles. Decision-makers may be forced to make hasty choices based on incomplete information. Courts may block or delay response measures that lack a solid legal backing, and litigation and delays may drain precious resources during the crisis. A lack of legal preparation can result in an ineffective public health response, loss of public trust and damage to individual rights and freedoms.

The COVID-19 pandemic has exposed strengths and shortcomings in many legal frameworks. Unprepared countries across the globe scrambled to draft new systems of rules. Now is the time to review and improve legal frameworks before the next emergency hits.

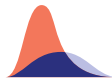
Resolve to Save Lives, an initiative of Vital Strategies, is committed to making the world safer from epidemics and other public health threats. Our legal team supports governments to develop strong public health laws that realize global best practices and international obligations. Based on our review of legal measures around the world, we've identified twelve features that characterize effective public health emergency laws. While the legal framework for public health laws vary from one country to the other according to each country's needs, local context and legal tradition, these features should be universal. As long as they are met, it does not matter if these characteristics are found in one piece of legislation or across various pieces of law. Effective laws:

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|  <b>1</b> Address the complete lifecycle of emergencies                      |  <b>7</b> Protect human rights                                       |
|  <b>2</b> Define the triggering events                                       |  <b>8</b> Integrate functioning health strategies                    |
|  <b>3</b> Balance strong and agile decision-making with meaningful oversight |  <b>9</b> Ensure flow of health data across all levels of governance |
|  <b>4</b> Fund adequately  |  <b>10</b> Safeguard health care workers                             |
|  <b>5</b> Equip authorities with all relevant public health tools            |  <b>11</b> Enforce the rules without imposing unjust penalties       |
|  <b>6</b> Fulfill IHR obligations  |  <b>12</b> Promote transparency                                      |

This legal guide is meant to help government decision-makers develop a legal framework that can respond appropriately to public health emergencies. It provides background information on and describes key elements of the characteristics that distinguish the most effective public health emergency laws. Users of the guide are invited to review their current legal framework or new draft legislation through assessment questions for each characteristic. Additional resources are also available to provide more information on specific issues.

Global knowledge around public health emergencies is evolving rapidly. This legal guide is a “living,” dynamic document. Feedback and suggestions can be sent to [covid19-legal@resolvetosavelives.org](mailto:covid19-legal@resolvetosavelives.org).

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# 1 Address the complete lifecycle of emergencies

A public health emergency is an occurrence or imminent threat of an illness or health condition that poses a substantial risk of a significant number of human fatalities or of permanent or long-term disabilities. As any health crisis evolves from sporadic incidents to clusters to wide-spread prevalence and back down, the strategies shift through phases of preparedness, containment, mitigation, suppression and recovery.

## KEY ELEMENTS

**Allows flexibility in emergency response:** The legal framework must empower officials to seamlessly and appropriately contain, mitigate and suppress the emergency—each of which requires different techniques and intensity of action. Overly rigid requirements—for example, mandating the same response no matter the situation or severity—will hinder the response and waste precious resources.

**Prepares for emergencies in advance:** A legal framework that only addresses how to handle an emergency once it has occurred misses the opportunity to prevent, delay or abate the crisis as well as to learn lessons that may stop the next one. The law should create permanent institutions and procedures that are dedicated to preparing and preventing public health emergencies.

**Incorporates alert levels:** Risk alert-level systems communicate the level of health risk and indicate what measures should be taken at each level to maximize safety. Alert-level systems provide a framework to support clear decision-making, improve accountability and communicate with the public. In the highest alert stage, there may be strict measures, like stay-at-home requirements. As the level of alert is reduced, a stepwise lessening of these restrictions is possible.

**Mandates evaluation of past response efforts:** The law should mandate officials to conduct a full evaluation of the response once the immediate crisis has passed, often known as an After-Action Review (AAR) or Inter-Action Review (IAR). The comprehensive evaluation should make recommendations on how policymakers can improve the legal framework before the next emergency.

## ASSESSMENT QUESTIONS

*Does your legal framework:*

- Cover all phases of emergency?
- Provide authorities with flexibility to adjust activities to different phases?
- Empower permanent government bodies to focus on emergency readiness?
- Delineate the phases of emergency based on set metrics or alert levels?
- Require a formal evaluation of the response following a public health emergency?

## ADDITIONAL RESOURCES

- World Health Organization (WHO), Critical Preparedness, Readiness and Response Actions for COVID-19, Interim Guidance, June 2020.
- Resolve to Save Lives, Staying Alert: Navigating COVID-19 Risk Toward a New Normal, May 2020.
- World Health Organization, Guidance for Conducting a Country COVID-19 Intra-Action Review (IAR), July 2020.

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## 2 Define the triggering events

Public health emergency laws contain exceptional powers required to prevent and respond to a range of public health emergencies including, but not limited to, outbreaks of infectious diseases. The nature and scope of these risks will vary across countries and health systems. Conducting a risk assessment will help determine a country's most pressing risks and inform its definition for what events trigger a public health emergency. While a broad definition could prompt excessive emergency measures when ordinary protocol would suffice, an overly restrictive scope could block access to valuable emergency provisions.

### KEY ELEMENTS

**Broadly defines public health events** – Public health risks are numerous and diverse. While infectious diseases are a major concern for the health of populations, food-related; chemical; radiological; and nuclear events [can also have disastrous public health consequences](#). Effective public health emergency laws should therefore provide for their prevention and response. In accordance with disaster management laws, countries can also consider public health consequences of natural and man-made disasters. When enumerating these public health events, countries should ensure the lists and definitions align with other public health laws and existing surveillance technical guidelines.

**Includes food- and animal-related diseases:** [Over 60% of new diseases infecting humans in recent decades have come from animals](#). Public health emergency laws should consider public health events that are likely to harm human health, irrespective of their source or origin. The list of triggering events should be developed through multisectoral coordination and collaboration that includes officials responsible for agriculture, water, zoonosis and others who can contribute to a comprehensive understanding of the local public health risks.

**Allows unexpected events through an open-ended list:** The COVID-19 pandemic illustrates the public health risk posed by new or unknown diseases, sometimes called “Disease X”. Adopting an open-ended list of public health events will allow the emergency law to go into force when new and unanticipated public health events, conditions or diseases occur. Countries could also consider adding a catchall clause to their list for any public health events declared a public health emergency of international concern by the World Health Organization (WHO). [Alternatively, there should be a streamlined procedure for adding new public health events to the list](#).

**Sets emergency-level thresholds for controllable events:** Emergency powers should be reserved for true emergencies, and an outbreak of infectious disease does not necessarily constitute an emergency. [Most health systems can contain minor outbreaks or other limited public health events before they become emergencies without requiring exceptional actions](#). The law should establish clear thresholds for when these controllable events shift into emergency scenarios.

### ASSESSMENT QUESTIONS

Does your legal framework:

- Define “public health event,” “infection” or “disease” in a way that applies to all relevant government agencies and health facilities?
- Cover a broad range of public health events irrespective of source or origin?
- Provide some flexibility to respond to new or unknown pathogens?
- Reserve emergency status for true public health emergencies?

### ADDITIONAL RESOURCES

- World Health Organization, [Rapid Risk Assessment of Acute Public Health Events](#), 2012.
- World Health Organization, Regional Office for Africa, [Technical Guidelines for Integrated Disease Surveillance and Response in the African Region](#): Third Edition, March 2019.
- World Health Organization, [International Health Regulations Third Edition](#), Annex 2, 2005.

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## 3 Balance strong and agile decision-making with meaningful oversight

Emergency response requires clear and quick action by competent public health authorities without unnecessary bureaucracy. However, emergency powers can be abused by executive bodies without checks and balances, so the relevant law should ensure meaningful oversight by the legislature, the judiciary or other autonomous bodies. If emergency powers are abused, or last longer than the crisis, the public may lose faith in public health officials. The emergency law authorizes these new powers and imposes limitations.

### KEY ELEMENTS

**Provides clear executive decision-making authority:** As official roles and responsibilities shift and change during an emergency, disagreements and delays can arise when there are gaps, overlaps or other confusion. A sound legal framework provides clear information for all stakeholders at national and subnational levels about their new operational roles and responsibilities, chains of command, reporting lines and budget implications.

**Institutes coordination mechanisms:** The law can establish coordination mechanisms such as multisectoral or multiagency working groups. These coordination mechanisms should be established before a crisis occurs, so they can be quickly activated when emergency strikes. These working groups can disseminate information across stakeholders and quickly identify and resolve any conflicts or confusion.

**Mandates independent oversight:** The law should appoint oversight mechanisms to prevent executive overreach while allowing public health officials to take appropriate measures in a timely manner. The legislature and judiciary may have a role in this, or there may be an independent body dedicated to this purpose.

**Bounds emergency powers with sunset clauses and other limitations:** The emergency provisions should be strictly temporary in scope. The law should establish which authorities have the power to declare a public health emergency and under what conditions, how notice of the emergency declaration is communicated to the public, and how long the temporary emergency measures can remain in effect. For example, some countries require the legislature to approve the continuance of any emergency declaration that lasts more than a set period of days, weeks or months.

### ASSESSMENT QUESTIONS

*Does your legal framework:*

- Clearly define roles, responsibilities and accountabilities of the authorities across a range of events or emergencies?
- Foresee operational plans and coordination mechanisms between different authorities?
- Establish which authority or authorities will take decisions about emergency measures?
- Set out meaningful judicial, legislative or other oversight for such decisions?
- Include a sunset clause to ensure the emergency is temporary?

### ADDITIONAL RESOURCES

- World Health Organization, Handbook for Developing a Public Health Emergency Operations Centre: Part A, August 2018.

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## 4 Fund adequately

Public health emergencies have profound economic and fiscal impact. Emergencies simultaneously reduce government revenue while increasing expenses and exposure to risk. While specifics vary, the economic impacts are invariably “[far more expensive – in lives and money – than investing in preparedness.](#)” In many public finance management and regulatory systems, laws can allocate guaranteed year-round funding for the anticipated expenses of agencies, institutions and officials that prepare for, detect, and respond to such crises. Other financial mechanisms can be established through law to provide additional funds when extreme or unanticipated events strike. In an emergency, the frontline needs immediate access to funds, so unnecessary administrative barriers should be eliminated while maintaining accountability.

### KEY ELEMENTS

**Fully funds permanent programs:** Many emergency-related expenses are predictable. These predictable costs may include ministry divisions, like surveillance and laboratories, public health institutes and/or emergency operations centers and their permanent staff, coordination committees or task forces, technology systems and equipment stockpiles, strategic planning, trainings and simulations exercises, among other traditional expenses. Government budget allocations should guarantee these normal operating expenses for the agencies, institutions and officials responsible for emergency response at the national and subnational levels.

**Accelerates disbursement to frontline:** Emergencies require an expedited disbursement mechanism, [especially to the frontline, where delays can be deadly.](#) For example, funding the immediate deployment of teams to investigate potential hazards and issuing hazard pay. The law should fast-track authorization and payment to meet spending needs, authorize advance appropriation, and simplify the procurement process.

**Establishes additional emergency funding sources:** If a worst-case scenario materializes, the government should have fiscal procedures to redirect money as necessary, such as supplementary budgets, virements or transfers that reprioritize between line items or within budgetary programs, and emergency decrees or temporary suspension of fiscal rules. [Endowing an emergency contingency fund can reserve funds for sudden shocks.](#)

**Fosters accountability systems:** Emergency funds hand significant power to the executive and limit the legislature’s ability to approve budgets and appropriate funds elsewhere. The law must provide clear rules on the triggers for use of funds, allocations of money and transparent reporting. These rules should include effective expenditure tracking mechanisms to detect and prevent misappropriation of resources.

### ASSESSMENT QUESTIONS

*Does your legal framework:*

- Guarantee year-round funding for emergency preparedness?
- Create or identify additional funding sources that can be redirected quickly to emergency response?
- Offer clear guidelines for when such reserve funds can be used?
- Delineate special procedures to accelerate disbursement to the frontline?
- Outline streamlined accountability systems to ensure funds are spent appropriately?

### ADDITIONAL RESOURCES

- International Monetary Fund, [COVID-19 Funds in Response to the Pandemic](#), August 2020.
- World Bank, [From Panic and Neglect to Investing in Health Security: Financing Pandemic Preparedness at a National Level](#), December 2017.
- World Health Organization, [How to Budget for COVID-19 Response?](#) March 2020.
- World Health Organization, [Budget Matters for Health: Key Formulation and Classification Issues](#), 2018.

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## 5 Equip authorities with all relevant public health tools

During normal times, national and local public health officials should have legal authority to conduct basic public health surveillance, investigation and response duties. In an emergency, they will need additional authority to take extraordinary measures to prevent mass casualties. The law needs to distinguish between the powers granted in normal times and those that can be deployed in an emergency. The emergency authority given to public health officials must be broad and flexible to allow for innovative approaches to confront unforeseen challenges. Tomorrow's public health crisis may require an action that cannot be anticipated today.

### KEY ELEMENTS

**Authorizes surveillance and case investigation:** Public health officials must be able to detect cases and track the potential spread of disease using community and event-based surveillance techniques. The law should grant public health officials investigative powers to identify cases, track vectors of disease and interview and test likely contacts.

**Authorizes delivery of medical treatments and other countermeasures:** Public health officials should have authority to work with doctors to provide medical treatment to patients as well as vaccines for the population where available. The legal framework should regulate treatments and vaccines that are developed in response to a novel disease to ensure they meet appropriate safety and efficacy standards.

**Authorizes other public health and social measures:** In extraordinary cases, public health officials may need the power to enact extraordinary measures that will stop or slow the spread of disease, such as mandatory quarantine and isolation, enhanced hygiene and sanitation practices, and physical distancing requirements like cancellation of mass gatherings and school and business closures. Contaminated property may need to be vacated, cleaned or destroyed. The law should require the government provide social and economic support to people who bear a disproportionate cost of these measures.

**Clearly delegates authority to national and local public health officials:** During an emergency, the health minister will not be able to approve each individual order for every case. Lower level health officials, especially those working in the community, should have legal authority to take necessary actions. The law should clarify which officials at which agencies have this delegated authority and under what circumstances are they allowed to act, using what procedures.

### ASSESSMENT QUESTIONS

*Does your legal framework:*

- Grant public health officials authority to conduct surveillance and investigate cases?
- Grant public health officials authority to regulate medical countermeasures?
- Grant authority to enact population-wide public health and social measures?
- Require economic and social support to those disproportionately affected by these measures?
- Clarify who has responsibility for issuing these orders at national and local levels?

### ADDITIONAL RESOURCES

- World Health Organization, [Advancing the Right to Health: The Vital Role of Law](#), Chapter 10, 2016.
- Resolve to Save Lives, [COVID-19 Contact Tracing Playbook](#), August 2020.
- Resolve to Save Lives, [Legal and Ethical Considerations of Public Health and Social Measures](#), April 2020.



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## 6 Fulfill IHR obligations

The International Health Regulations (IHR) form the main international legal framework for the prevention and response to international spread of disease. As a legally binding instrument, the IHR outline the rights and obligations of countries, and impact the functions and responsibilities of their national and subnational governmental structures. Countries are required to develop and maintain core public health capacities, promptly share information with the World Health Organization (WHO), and avoid unnecessary interference with international trade and traffic.

### KEY ELEMENTS

**Requires notification to WHO:** The [IHR](#) is primarily concerned with detecting and reporting public health events that may constitute a [public health emergency of international concern](#). Under IHR, events that are unusual or unexpected, have serious public health impacts, pose a significant risk of international spread, or create a substantial risk of international trade and travel restrictions should be notified to WHO. The law should establish and support a public health surveillance system to identify and assess public health events occurring in their territory.

**Establishes a National IHR Focal Point:** In order to adequately report public health events and ensure a continuous flow of information between countries and WHO, IHR requires countries to establish a [National IHR Focal Point as a permanent office](#). The National IHR Focal Point is responsible for sending timely communication to WHO in line with IHR requirements, as well as disseminating information to and consolidating inputs from relevant sectors of the administration within the country.

**Builds capacity of points of entry:** Points of entry play a key role in containing the international spread of disease. IHR requires countries to designate points of entry and develop core capacities at each designated point of entry. The law should ensure that public health measures implemented at points of entry are commensurate with and restricted to public health risks and [avoid unnecessary interference with international traffic and trade](#). International travelers, conveyances, and their goods must be treated with respect during screening and treatment. The law should allow the government to enter bilateral or multilateral agreements with neighboring countries concerning prevention or control of international transmission of disease at ground crossings and other points of entry.

**Meets other IHR obligations:** Additionally, the law should fully implement other IHR obligations, including those related to the development of core capacity for surveillance and response, use of IHR health documents, public health measures applicable international travelers and conveyances, and the protection of the human rights of persons and travelers. See Figure I: Summary table of IHR obligations.

### ASSESSMENT QUESTIONS

*Does your legal framework:*

- Identify an office with the legal obligation to serve as National IHR Focal Point by providing a 24/7 communication channel with WHO?
- Require all suspect cases that are identified anywhere in the country to be reported to the National IHR Focal Point?
- Require the office to notify WHO of a potential public health emergency of international concern?
- Designate points of entry and require them to establish and maintain a public health emergency contingency plan?
- Authorize collaboration agreements with neighboring states on public health preparedness and response at points of entry?

### ADDITIONAL RESOURCES

- World Health Organization, [The National IHR Focal Point, Toolkit for Implementation in National Legislation](#), January 2009.
- Resolve to Save Lives, [COVID-19 and International Law, Quarantine of International Travelers](#), April 2020.
- Resolve to Save Lives, [Key Obligations for IHR States Parties](#), October 2020.

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## 7 Protect human rights

Even in a public health emergency, governments have obligations to respect human rights. Laws should plan for any use of emergency powers to take place within the parameters provided by international human rights law, particularly the International Covenant on Civil and Political Rights (ICCPR). An emergency public health law should be a national law of general application which foresees potential restrictions, ensures that they are not more intrusive than needed to achieve the objective, and prohibits arbitrary or unreasonable implementation. People who feel their rights have been violated should have access to a meaningful appeal process that provides adequate redress for legitimate harms.

### KEY ELEMENTS

**Guarantees non-derogable rights:** Certain non-derogable rights must apply in all situations, even emergencies: these include the right to life, the prohibition on torture, freedom of expression and religion, and privacy under the ICCPR. Under the [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#), States must continue even in an emergency to satisfy a minimum core obligation to provide essential nutritious food and clean water, primary health care and basic shelter and housing.

**Creates procedures to protect other rights:** Public health emergencies may permissibly lead to restrictions on other rights under the ICCPR, provided such restrictions respect the [Siracusa Principles](#) of legality, necessity, proportionality and non-discrimination. The law should require decision-makers to evaluate whether these principles are met prior taking any action that impinges on anyone's human rights.

**Ensures non-discrimination:** Measures should never perpetuate discrimination on any grounds that are protected under law, such as race, caste, color, sex, sexual orientation and gender identity, disability, language, religion, political or other opinion, national or social origin, property, birth or other status. The prohibition on discrimination should be guaranteed as the law is [written and as it is implemented](#).

**Provides redress for any rights violations:** Harms caused by the government during an emergency should be subject to meaningful safeguards. [Victims of alleged abuses should have access to an appeal process to provide redress for legitimate harms](#). This process should be available throughout the emergency, to the extent possible, and continue for a reasonable time after the emergency has ended.

### ASSESSMENT QUESTIONS

*Does your legal framework:*

- Anticipate the use of emergency powers, provide for a state of emergency to be officially proclaimed and for the affected population to be informed?
- Ensure that any permissible restrictions respect principles of legality, necessity, proportionality and non-discrimination?
- Safeguard non-derogable rights?
- Provide an appeal mechanism for victims of alleged abuses?
- Subject the declaration of a state of emergency to meaningful legislative and judicial oversight?

### ADDITIONAL RESOURCES

- Human Rights Watch, [Human Rights Dimensions of COVID-19 Response](#), March 2020.
- Office of the High Commissioner on Human Rights, [Emergency Measures and COVID-19: Guidance](#), April 2020.
- United Nations Human Rights Council, [Disease Pandemics and the Freedom of Opinion and Expression](#), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, April 2020.



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## 8 Integrate functioning health strategies

To optimize the use of resources during a public health emergency, the law should build upon existing public health structures—such as [Integrated Disease Surveillance and Response \(IDSR\) systems](#)—and, in keeping with a [One Health approach](#), maintain coordination across the human, animal and environmental health sectors. IDSR is a strategy for implementing systematic identification, collection, collation, analysis and interpretation of disease occurrence and public health event data, for the purposes of taking timely and robust action. One Health is a collaborative, multisectoral and transdisciplinary approach working at the national and subnational levels.

### KEY ELEMENTS

**Builds on existing systems:** Existing laws may govern procedures and systems for many public health functions, such as disease surveillance, contact tracing, death registration and disposal of infectious waste and human remains. The legal framework for a public health emergency should build upon these existing systems, rather than create parallel structures.

**Fosters multi-sectoral, multi-agency response:** Legal frameworks should ensure coordination among the health, animal, agriculture and environmental sectors, ideally building upon existing [One Health](#) and IDSR systems and strategies. This coordination should occur at both the national and subnational levels.

**Supports continuity of essential services:** Health systems may be challenged by increased demand during a public health emergency. To meet demand, routine and elective services may be suspended. However, the legal framework should [identify essential services](#)— such as immunizations, management of chronic diseases, reproductive health and childbirth, and core services for vulnerable populations—and ensure that these services are funded and continue during the public health emergency.

**Equitably allocates scarce resources:** Resources may need to be reallocated in order to meet increased demands on the health system, which may involve prioritizing some people or groups over others. The legal framework should ensure that allocation of scarce resources is done in accordance with [ethical principles](#), is fair, and addresses the needs of vulnerable and at-risk populations. The failure to protect vulnerable groups subjects them to higher risk and undermines the emergency response and broader public health goals.

### ASSESSMENT QUESTIONS

*Does your legal framework:*

- Take advantage of and build on existing public health systems and procedures?
- Identify essential health services and ensure continuity during an emergency?
- Protect the needs of the most vulnerable and at-risk populations In the event scarce resources must be allocated?
- Provide a mechanism for coordination among relevant sectors and agencies at the national and sub-national levels?

### ADDITIONAL RESOURCES

- World Health Organization, [Maintaining Essential Health Services: Operational Guidance for the COVID-19 Context, Interim Guidance](#), June 2020.
- Food and Agriculture Organization of the United Nations, [World Organization for Animal Health, and World Health Organization, Taking a Multisectoral, One Health Approach: A Tripartite Guide to Addressing Zoonotic Diseases in Countries](#), 2019.
- World Health Organization, Regional Office for Africa, [Technical Guidelines for Integrated Disease Surveillance and Response in the African Region](#): Third Edition, March 2019.

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## 9 Ensure flow of health data across all levels of governance

In a public health emergency, the rapid sharing of data is critical to the ability of governments, to respond to, coordinate, adapt and manage effective response strategies, both domestically and globally. Sharing data with relevant stakeholders makes effective use of limited resources and helps reduce the time between identification of a public health emergency and the mounting of an effective, coordinated response strategy.

### KEY ELEMENTS

**Collects timely and accurate data:** Public health data collection systems— such as [IDSR](#)—must be developed *prior* to a public health emergency. The legal framework should establish robust mechanisms for the regular and timely collection of public health surveillance data throughout any emergency, [including standardized forms and processes that ensure quality control and accuracy of data](#).

**Protects data privacy:** Generally, anonymized aggregated data is sufficient for emergency planning and response, and individually identifying information is rarely necessary. The legal framework should require anonymization of shared data and protect people's identifying information. [If individually identifying data is necessary, access should be limited to only those who require the data, and only for the specific public health purpose for which it is required](#). Individually identifiable information should not be automatically shared with third parties, including agencies responsible for national security, law enforcement, or the allocation of social benefits.

**Shares data with all relevant stakeholders:** [Data pertaining to a public health emergency should be shared widely among all relevant stakeholders](#) — across government agencies, between national and sub-national levels of government, with international partners, and the public—as appropriate and in accordance with privacy and data protection rules. The legal framework should mandate that data be shared with or made accessible to all relevant stakeholders with as few restrictions, either technical or legal, as possible.

**Standardizes data to be collected:** To ensure accuracy, the law should regulate what data sources can be included in official statistics. For example, cases may need to be confirmed through blood test at a government-certified laboratory. Overly strict standards may block crucial information needed by decision-makers and the public.

### ASSESSMENT QUESTIONS

Does your legal framework:

- Mandate the collection of public health data on a timely and regular basis?
- Ensure the quality and accuracy of data through the use of standardized forms and processes?
- Ensure that public health data is accessible by stakeholders across all relevant sectors and tiers of government, as well as international partners and the public?
- Protect all individually identifying information of patients?
- Clearly limit any exceptions to the protection of individually identifying information to that which is strictly necessary?

### ADDITIONAL RESOURCES

- World Health Organization, Regional Office for Africa, [Technical Guidelines for Integrated Disease Surveillance and Response in the African Region: Third Edition](#), March 2019.
- Global Research Collaboration for Infectious Disease Preparedness, [Principles of Data Sharing in Public Health Emergencies](#), June 2018.
- United Nations Office of the High Commissioner for Human Rights, [A Human Rights Based Approach to Data, Leaving No One Behind in the 2030 Agenda for Sustainable Development](#), 2018.
- World Health Organization, [WHO Guidelines on Ethical Issues in Public Health Surveillance](#), 2017.

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| <ol style="list-style-type: none"> <li>1 Address the complete lifecycle of emergencies</li> <li>2 Define the triggering events</li> <li>3 Balance strong and agile decision-making with meaningful oversight</li> <li>4 Fund adequately</li> <li>5 Equip authorities with all relevant public health tools</li> <li>6 Fulfill IHR obligations</li> </ol> | <ol style="list-style-type: none"> <li>7 Protect human rights</li> <li>8 Integrate functioning health strategies</li> <li>9 Ensure flow of health data across all levels of governance</li> <li><b>10</b> Safeguard health care workers</li> <li>11 Enforce the rules without imposing unjust penalties</li> <li>12 Promote transparency</li> </ol> |
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## 10 Safeguard health care workers

Health care workers are an integral part of emergency crisis health care delivery and must be adequately protected from the direct and incidental effects of providing care at the frontlines. The duties expected of health care workers during a crisis—whether of doctors, nurses, community health workers, ambulance drivers, cleaning and receptionist staff or volunteers— must fall within their legal and regulatory scope of practice and must have regard for their competing duties: to patients, themselves, their families, colleagues and society and at large.

### KEY ELEMENTS

**Facilitates infection prevention and control (IPC):** Specific IPC policies and protocols can prevent harm caused by health care-associated infections. At a minimum, the law should facilitate and reiterate key IPC measures for health care settings during an emergency, including the provision and instruction of appropriate personal protective equipment, hygiene and cleaning practices, reporting of health-care related infections, as well as monitoring and evaluation.

**Authorizes compensation and benefits:** The law should authorize officials to approve hazard pay and other enhanced benefits for health care workers, such as free medical care, daily sickness allowances, workers compensation for injuries, incapacity social security benefits, incapacity lump sum benefits to survivors' or death-in-service benefits, mental health assessments, priority testing and vaccination where available.

**Enhances liability protections:** Despite health care workers' best efforts, emergency care may not meet normal quality standards. The usual legal and medical standards of care expected may need to be lowered to "crisis standards of care." The law should adjust accordingly to protect health care workers and institutions from liability arising from good-faith acts or omissions when administering emergency care or new treatments.

**Guarantees safety at home and in the community:** [Misinformation and fear can drive some members of the public to blame health care workers for the emergency.](#) The government should specifically protect health care workers and their families from violence and harassment that can sometimes accompany a public health emergency.

### ASSESSMENT QUESTIONS

*Does your legal framework:*

- Require health care facilities to provide adequate safety measures to reduce harm from infections?
- Provide health care facilities with the means and training to protect workers?
- Allow health care workers to receive additional compensation or other benefits during an emergency?
- Protect health care workers from liability for good-faith efforts during the emergency?
- Include measures to guarantee health care workers are safe at home and in their community?

### ADDITIONAL RESOURCES

- Institute of Medicine of the National Academies, [Crisis Standards of Care: A Systems Framework for Catastrophic Disaster Response](#), 2012.
- World Health Organization, [Coronavirus disease \(COVID-19\) Outbreak: Rights, Roles and Responsibilities of Health Workers, including Key Considerations for Occupational Safety and Health: Interim Guidance](#), March 2020.
- World Health Organization and the International Labour Organization, [Occupational Safety and Health in Public Health Emergencies: A Manual for Protecting Health Workers and Responders](#), 2018.

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| 1 | Address the complete lifecycle of emergencies                      | 7  | Protect human rights                                       |
| 2 | Define the triggering events                                       | 8  | Integrate functioning health strategies                    |
| 3 | Balance strong and agile decision-making with meaningful oversight | 9  | Ensure flow of health data across all levels of governance |
| 4 | Fund adequately  | 10 | Safeguard health care workers                              |
| 5 | Equip authorities with all relevant public health tools            | 11 | Enforce the rules without imposing unjust penalties        |
| 6 | Fulfill IHR obligations  | 12 | Promote transparency                                       |



## 11 Enforce the rules without imposing unjust penalties

People must comply with emergency orders for them to be effective. While law enforcement may play a role in enforcing mandatory rules, some enforcement tactics can actually be counterproductive to public health objectives. Harsh or arbitrary punishments can foster community distrust of government and its motives, which reduces the likelihood that community members will comply with public health instructions. Effective laws do not default to punishing every violation, but rather employ more sophisticated public health techniques to change behavior. The public health agency should take a central role in developing and coordinating an enforcement strategy that achieve the public health objectives.

### KEY ELEMENTS

***Builds community trust and lead by example:*** As the face of the government, all officials including law enforcement must lead by example. The law should require officials across the government to follow rules and remove officials who violate them. Government officials should not be exempt from broadly applicable public health rules nor enjoy unjustifiable privileges or immunities.

***Makes government responsible for educating the population about public health measures and their justification:*** Public health measures can only be effective if people know about them, which can be especially challenging in the chaotic environment of emergencies. Compliance will be higher if people understand and agree with the rationale for the measures. The law should impose upon the government the responsibility to educate the affected population about new rules, the public health rationale behind them, and potential civil or criminal penalties if the rules are violated. The government should conduct these public education and risk communication campaigns throughout the affected area in all local languages.

***Supports people who lack the means to follow the rules:*** Some people may not be able to comply with emergency orders because of economic hardship, work or family requirements, mental and physical illness or disability. Instead of punishing these vulnerable people, the law should guarantee them the essential services and goods needed to comply. The law should place an affirmative duty on the government to provide supplemental help, such as food, shelter, transportation, personal protective equipment, legal, medical, or other appropriate services.

***Avoids applying sanctions that harm individuals or damage community relations:*** Sanctions should be applied sparingly and only when other efforts to obtain compliance have failed. Civil sanctions, including fines and license suspensions, should never be overly punitive. The law should allow criminal sanctions only in extreme and rare cases when a violator's willful conduct creates a direct and immediate risk to others. No one, even those who violate the rules, should be physically harmed or otherwise subjected to degrading or inhumane treatment.

***Prohibits unfairly targeting marginalized or vulnerable communities through discrimination:*** Without careful attention, already vulnerable or marginalized groups may perceive emergency orders as merely an excuse for increasing discrimination against them. The law itself should commit to the principle of non-discrimination and should impose a duty on all government officials to ensure that their discretionary powers are not used to unfairly target vulnerable groups. The law should require any enforcement officers be trained on how to avoid abusive or discriminatory enforcement tactics.

### ASSESSMENT QUESTIONS

*Does your legal framework:*

- Make the public health agency responsible for developing and coordinating an enforcement strategy?
- Require government officials to follow the law without unnecessary exemptions?
- Assign an affirmative duty to disseminate information about new rules to the public?
- Require the government to provide people with additional services that they may require for compliance?
- Impose sanctions only as a last resort and appropriately tailored to the violation?
- Prioritize non-discriminatory principles as written and as applied?

### ADDITIONAL RESOURCES

- World Health Organization, [Guidance for Managing Ethical Issues in Infectious Disease Outbreaks](#), July 2016.
- United Nations. COVID-19 and Human Rights We are all in this together. April 2020.
- The Hastings Center, [Pandemics: The Ethics of Mandatory and Voluntary Interventions](#), 2020.

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## 12 Promote transparency

During a public health emergency, people need information on the nature of the threat, how to avoid risks, the availability of services, legal requirements, and other steps authorities are taking to protect the population. Lack of information or misinformation undermines the public's ability to identify reliable sources of accurate information. This leads to uncertainty and fear that may amplify sources of misinformation, creating panic and threatening public health. Emergency laws should include an obligation for government transparency, methods to address harmful misinformation, and protection for whistleblowers.

### KEY ELEMENTS

**Codifies transparency obligations in law:** Emergency laws should include an obligation for government transparency throughout all phases of the emergency. The legal framework should require government to disseminate factual up-to-date information on the threat, how to reduce risk, the availability of services and official responses to the threat. Officials should have an affirmative obligation to correct harmful misinformation disseminated by government entities.

**Widely and consistently disseminates factual information:** The law should require emergency communications be consistently disseminated through various media and communication channels to reach the entire affected population, including those who live in remote locations. Communications should use clear, culturally appropriate language in local and national dialects, and prioritize audio and video dissemination for populations of all literacy levels.

**Supports media literacy and a diverse media environment:** Accurate reporting by reputable journalistic sources provides a powerful tool to disseminate factual information and reduce misinformation. Government should support media and digital literacy and provide factual information to journalists while supporting free, independent and diverse media sources.

**Protects consumers from fraud:** Consumer protection agencies should use enforcement mechanisms to identify fraudulent products and services sold in response to the public health emergency, seize dangerous and fraudulent products, remove false advertisements, and use administrative and criminal tools to cease and prosecute harmful activity.

**Shields whistleblowers:** Government should protect whistleblowers, including journalists, public health authorities, and civil society groups who bring to light information that threatens or harms the public interest, such as a violation of law, abuse of authority, fraud, or harm to the environment, public health, or public safety. In the case that government protections fail, the judicial system must have authority to protect whistleblowers.

### ASSESSMENT QUESTIONS

Does your legal framework:

- Include transparency requirements for the government that covers all phases of the emergency?
- Include requirements for consistent and continuous dissemination of factual information about the emergency, how to avoid risks, the availability of services, and government responses to the emergency?
- Include requirements to disseminate factual information broadly, using culturally appropriate language in local dialects, including audio communication?
- Provide for immediate correction of previously disseminated misinformation by government officials?
- Include protection for journalists reporting on the emergency and government responses to the emergency?
- Task consumer protection agencies with swiftly addressing fraudulent products and services sold in response to the public health emergency?
- Include protections for whistleblowers that includes judicial oversight?

### ADDITIONAL RESOURCES

- Article 19, [Viral Lies: Misinformation and the Coronavirus](#), March 2020.
- United Nations General Assembly. [Promotion and Protection of the Right to Freedom of Opinion and Expression](#), Note by the Secretary-General, Sept 2015.
- Reducing Corruption Risks with Data, [Public Procurement Transparency & Integrity. Ensuring Transparency in Emergency Procurement Recommendations](#), 2020.
- Open Government Partnership, [A Guide to Open Government and the Coronavirus: Open Response + Open Recovery](#), August 2020.



# Glossary

**Disease:** an illness or medical condition, irrespective of origin or source, that presents or could present significant harm to humans;

**Epidemic:** an increase in the number of cases of a disease or an event above what is normally expected in that population in a given area over a particular period of time;

**Event-Based Surveillance:** the organized and rapid capture of information, derived from reports, stories, rumors and other information, about events that are of potential risk to public health;

## **IHR or International Health**

**Regulations:** the revised International Health Regulations of the World Health Organization adopted by the World Health Assembly on 23 May 2005. IHR is a legally binding instrument that aims to prevent, protect against, control, and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks and that avoid unnecessary interference with international traffic and trade.

**Individually (or personal) identifiable information:** information that, when used alone or with other relevant data, can identify an individual;

**Isolation:** the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals;

**National IHR Focal Point:** the national center, designated by each IHR (2005) State Party, which shall be accessible at all times for communications with WHO IHR Contact Points;

**Pandemic:** an epidemic that has spread over several countries/continents, usually affecting a large number of people;

**Point of Entry:** a passage for international entry or exit of travelers, baggage, cargo, containers, conveyances, goods and postal parcels as well as agencies and areas providing services to them on entry or exit;

**Public Health Emergency:** an occurrence or imminent threat of an illness or health condition, that poses a substantial risk of a significant number of human fatalities, or permanent or long-term disability;

**Public Health and Social Measures (PHSMs):** nonpharmaceutical interventions implemented to slow the spread of disease and save lives, including personal measures that individuals can take in their everyday life, community measures that governments can put in place to reduce social interaction and use of public spaces, environmental measures that organizations and individuals can use to sanitize physical spaces, and disease control measures that include activities to identify and isolate suspected and confirmed cases.

**Public health emergency of international concern:** an extraordinary event which is determined, as provided in the IHR (2005) to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response.

**Public Health Event:** A manifestation of disease or an occurrence that creates a potential for disease. A public health event may be an insignificant or a significant occurrence, planned or unplanned (e.g. extreme weather event or mass gathering), that may impact the safety and security of communities.

**Public health surveillance:** the systematic ongoing collection, collation and analysis of data for public health purposes and the timely dissemination of public health information for assessment and public health response as necessary;

**Quarantine:** the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit the transmission of the disease to non-quarantined individuals.



# Checklist

## An Effective Public Health Emergency Law

### 1 ADDRESSES THE COMPLETE LIFECYCLE OF EMERGENCIES

- Allow flexibility in emergency response
- Prepares for emergencies in advance
- Mandates evaluation of past response efforts
- Incorporates alert levels

### 2 DEFINES THE TRIGGERING EVENTS

- Broadly defines public health events
- Includes food- and animal-related diseases
- Allows unexpected events through an open-ended list
- Sets emergency level thresholds for controllable events

### 3 BALANCES STRONG AND AGILE DECISION-MAKING WITH MEANINGFUL OVERSIGHT

- Provides clear executive decision-making authority
- Institutes coordination mechanisms
- Mandates independent oversight
- Bounds emergency powers with sunset clauses and other limitations

### 4 FUNDS ADEQUATELY

- Fully funds permanent programs
- Accelerates disbursement to frontline
- Establishes additional emergency funding sources
- Fosters financial accountability systems

### 5 EQUIPS AUTHORITIES WITH ALL RELEVANT PUBLIC HEALTH TOOLS

- Authorizes surveillance and case investigation
- Authorizes delivery of medical treatments and other countermeasures
- Authorizes other public health and social measures
- Clearly delegates authority to national and local health officials

### 6 FULFILLS IHR OBLIGATIONS

- Requires notification to WHO
- Establishes a National IHR Focal Point
- Builds capacity at points of entry
- Meets other IHR obligations

### 7 PROTECTS HUMAN RIGHTS

- Guarantees non-derogable rights
- Creates procedures to protect other rights
- Ensures non-discrimination
- Provides redress for any rights violations

### 8 INTEGRATES FUNCTIONING HEALTH STRATEGIES

- Builds on existing systems
- Fosters multi-sector, multi-agency response
- Supports continuity of essential health systems
- Equitably allocates scarce resources

### 9 ENSURES FLOW OF HEALTH DATA ACROSS ALL LEVELS OF GOVERNANCE

- Collects timely and accurate data
- Protects data privacy
- Shares data with all relevant stakeholders
- Standardizes data to be collected

### 10 SAFEGUARDS HEALTH CARE WORKERS

- Facilitates infection prevention and control
- Authorizes compensation and benefits
- Enhances liability protections
- Guarantees safety at home and in community

### 11 ENFORCES THE RULES WITHOUT IMPOSING UNJUST PENALTIES

- Builds community trust and lead by example
- Makes government responsible for educating the population about public health measures and their justification
- Supports people who lack the means to follow the rules
- Avoids applying sanctions that harm individuals or damage community relations
- Prohibits unfairly targeting marginalized or vulnerable communities through discrimination

### 12 PROMOTES TRANSPARENCY

- Codifies transparency obligations in law
- Widely and consistently disseminates factual information
- Supports media literacy and a diverse media environment
- Protect consumers from fraud
- Shields whistleblowers