

PUBLIC HEALTH AND MEDICAL EMERGENCY POWERS

INTRODUCTION

This guide identifies the various types of emergencies relevant to the State of California and the powers and responsibilities assigned by statute to various state and local officials during a proclaimed emergency.¹ The officials addressed within this document include:

- 1) The Governor of the State of California
- 2) The Secretary of the California Health and Human Services Agency (CHHS)
- 3) The Director of the California Department of Public Health (CDPH). The Director is by statute the State Public Health Officer²
- 4) The Director of the Emergency Medical Services Authority (EMSA)
- 5) The board of supervisors of the 58 counties/city councils
- 6) The local health officers (LHO)
- 7) The administrator/medical officers of a local emergency medical services agency (LEMSA)
- 8) The Regional Disaster Medical and Health Coordinators (RDMHCs)
- 9) The Medical and Health Operational Area Coordinators (MHOACs)

The *State of California Emergency Plan* (SEP), authorized by the Emergency Services Act (ESA), defines a series of Emergency Support Functions (ESFs), one of which is the Public Health and Medical Emergency Support Function (CA-ESF 8).³

The Operational Area Emergency Plans in the 58 counties of California are beyond the purview of this document, but these plans may assign additional Public Health and Medical roles to the local officials discussed in this document and therefore should be consulted by those local officials.

¹ The information presented in this chapter represents an understanding of relevant statutes and regulations at the time of writing (2018). It is not meant to be a definitive legal guide. It serves as a starting point that should lead to a more detailed analysis and discussions between California health officials and their respective legal counsel.

² Health & Saf. Code, § 131005.

³ Gov. Code, § 8550 et seq.

WHAT IS AN “EMERGENCY”?

Broadly speaking, the term **emergency** can apply to any situation where quick action is needed to prevent or mitigate an adverse situation. On a daily basis throughout California, people may sustain significant injuries, experience a residential fire, or have other medical emergencies. Emergency response personnel may be dispatched to the scene of the emergency to aid victims and, if needed, prevent harmful effects to the rest of the community, e.g., to extinguish a fire, secure and investigate a crime scene, transport victims for medical care, minimize traffic delays, clean-up hazardous materials spills, or close the area where the emergency occurred to protect the public health.⁴ These events are typically small in scale and within the means of the local authorities to handle, and therefore require no political action to invoke extraordinary powers.

An outbreak of disease may require quick action to prevent its spread, and in this sense may present an emergency situation for public health officials. However, as explained in the *Health Officer’s Guide to Communicable Disease Control*, it is unnecessary for any official to take political action in the form of a formal declaration of emergency in order for the local health officer to “take measures as may be necessary” to prevent the spread of the disease. The local health officer has the legal authority to do so when the local health officer has reason to believe that a case of disease has occurred in his/her jurisdiction.^{5,6}

When emergencies arise that are of such magnitude that they exceed local resources or require the exercise of extraordinary powers, a proclamation or declaration of emergency may be needed to address the situation.

Declared or Proclaimed Emergencies

California has two sets of laws that require a political declaration or proclamation in order to exercise extraordinary powers to respond to emergencies. The first, and most comprehensive, is the Emergency Services Act (ESA). The ESA can apply to conditions of war or to any circumstance in which “conditions of disaster or of extreme peril to the safety of persons and property” that “are or are likely to be beyond the control of the services, personnel, equipment, and facilities” of the affected political subdivision and “require the combined forces of other political subdivisions to combat”.

The ESA allows for the proclamation of a **local emergency** by the local governing body (or designee) or a proclamation of a **state of emergency** by the Governor (or Director of the California Governor’s Office of Emergency Services, Cal OES, in the Governor’s absence). It also

⁴ See, e.g., Penal Code, § 409.5.

⁵ [Health Officer Practice Guide for Communicable Disease Control in California \(2013\)](#)

⁶ Health & Saf. Code, § 120175.

authorizes the exercise of powers under a **state of war emergency**, with or without a proclamation.

The second set of laws is contained in the California Health and Safety Code.⁷ This statutory scheme was originally enacted to facilitate the response to hazardous materials spills. Following the attacks on the World Trade Center, it has been expanded to include any “imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent.” Under such circumstances, the local health officer may declare a **local health emergency** under Section 101080 of the Health and Safety Code. The Health and Safety Code also authorizes the Director of CDPH to proclaim a **health emergency**.

The following sections contain further detail regarding these types of emergencies.

EMERGENCY SERVICES ACT (ESA)

Three Types of Emergency Proclamations

Under the ESA, there are three types of emergencies that can exist or be proclaimed:

- 1) Local Emergency
- 2) State of Emergency
- 3) State of War Emergency

Powers and Immunities Common to All Three Types of Emergencies

Under normal circumstances, the governing body of the local jurisdiction (board of supervisors or city council) is responsible to take measures as may be necessary to preserve and protect the public health.⁸ The local health officer is responsible to enforce and observe the orders and ordinances of the governing body that pertain to public health and sanitary matters; orders, including quarantine and other regulations, prescribed by the State Department of Public Health; and statutes relating to public health.⁹ During any type of ESA emergency, the local health officer may take any “preventive measure” that may be necessary to protect and preserve the public health from any public health hazard within his or her jurisdiction.¹⁰ However, the term “preventive measure” is limited to the abatement of any public health hazard caused by the disaster.¹¹ This provision does not authorize the local health officer to

⁷ Health & Saf. Code, § 101080.

⁸ Health & Saf. Code, §§ 101025, 101450.

⁹ Health & Saf. Code, §§ 101030, 101470.

¹⁰ Health & Saf. Code, § 101040.

¹¹ *Id.*

take measures to protect the public health unrelated to the emergency. That responsibility continues to rest during the emergency with the board of supervisors or city council. The health officer is otherwise limited to his or her duties set forth above.

Under any type of ESA emergency, the Governor may make expenditures from any fund legally available in order to deal with actual or threatened conditions, in addition to those appropriated to support the ESA.¹²

Various immunities take effect under any type of ESA emergency. These immunities include:

- 1) Physicians, hospitals, pharmacists, respiratory care practitioners, nurses, and dentists who render services at the express or implied request of any responsible state or local official or agency have no liability for any injury sustained by any person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained, except for a willful act or omission.¹³
- 2) A registered disaster service worker (DSW) or unregistered person duly impressed into service during a state of war emergency, state of emergency, or local emergency, in carrying out, complying with, or attempting to comply with, any order or regulation issued or promulgated pursuant to the provisions of the ESA or any local ordinance, or performing any of their authorized functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work for their respective entities.¹⁴
- 3) A political subdivision or other public agency, or officers, employees, agents, or duly enrolled or registered volunteers thereof, or unregistered persons duly impressed into service during a state of war emergency, a state of emergency, or a local emergency, are not liable, if acting within the scope of their official duties under the ESA or local ordinance, for personal injury or property damage sustained by any duly enrolled or registered volunteer or by any unregistered person duly impressed into service.¹⁵

If while performing his or her authorized duties, a DSW volunteer causes injury or property damage to a third party, he or she *may* be able to assert an immunity defense if sued by that third party for the injury or damage.¹⁶ Generally, immunity from liability *will not* apply in cases

¹² Gov. Code, § 8645.

¹³ Gov. Code, § 8659, subd. (a).

¹⁴ Gov. Code, §§ 8657, subd. (a). See also Gov. Code, § 820 et seq.; Civ. Code, § 1714.5, subd. (b); Cal. Code of Regs., tit. 19, §§ 2570.2, 2572.2; Volunteer Protection Act of 1997 (Pub.L.No. 105-19).

¹⁵ Gov. Code, § 8657, subd. (b).

¹⁶ Cal OES, California Disaster Service Worker Volunteer Guidance (October 2106), p. 17.

where acts are intentional, willful, grossly negligent, criminal, or outside the scope of permissible DSW activities.¹⁷

It is important to note that immunity does not prevent a lawsuit from being filed against a DSW volunteer, political subdivision, or political entity. Rather, immunity may be asserted as a defense to a legal action.¹⁸ A DSW volunteer, the political subdivision, or political entity may still be responsible for legal fees associated with defending any action, as legal fees are not covered by the DSW Program.¹⁹

For additional information about California's DSW Program, see the Cal OES publication titled *California Disaster Services Worker Volunteer Guidance* (October 2016).

Local Emergency

Under the ESA, a *local emergency* may be proclaimed by the local governing body, e.g., the city council or the board of supervisors, or by an official designated by ordinance, when:

- 1) Conditions of disaster or of extreme peril to the safety of persons and property exist within any city, county, or city and county, which
- 2) Are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that city, county, or city and county, and
- 3) Require the combined forces of other political subdivisions to combat.²⁰

During a proclaimed *local emergency*, the governing body or designated officials may promulgate orders and regulations, in writing and with widespread publicity and notice, that are necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety.²¹ The local health officer does not have the authority under this provision to independently issue orders and regulations, and must work with the local governing body to have such orders and regulations issued if needed to protect the public health. However, the local health officer may have the authority during the *local emergency* to independently issue orders related to communicable disease control.²² Further, the local health officer may abate any public health hazard caused by the disaster if necessary to protect and preserve the public

¹⁷ *Id.*

¹⁸ *Id. at 18.*

¹⁹ *Id.*

²⁰ Gov. Code, §§ 8558, subd. (c), 8630.

²¹ Gov. Code, § 8634.

²² Health & Saf. Code, § 120175.

health.²³ Finally, during a *local emergency* that is health-related, the local health officer has supervision and control over all environmental health and sanitation programs and personnel employed by the county, even in those counties that have bifurcated their public health and environmental health departments.²⁴

Whenever a *local emergency* is proclaimed by an official designated by ordinance, the *local emergency* shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.²⁵ The governing body shall review the need for continuing the *local emergency* at least once every 30 days until the governing body terminates the *local emergency*.²⁶

Finally, the governing body shall proclaim the termination of the *local emergency* at the earliest possible date that conditions warrant.²⁷

State of Emergency

A *state of emergency* may be proclaimed by the Governor, or by the Director of Cal OES in the Governor's absence or unavailability, when conditions of disaster or of extreme peril to the safety of persons and property exist within the state 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 city or county and require the combined forces of a mutual aid region or regions to combat;²⁸ and either

- 1) The Governor receives a request to do so from authorized city or county representatives;
or
- 2) The Governor finds that local authority is inadequate to cope with the emergency.²⁹

The proclamation must be in writing and takes effect immediately upon its issuance.³⁰ As soon thereafter as possible such proclamation must be filed with the Secretary of State.³¹ The Governor is required to cause "widespread publicity and notice" of the proclamation.³²

²³ Health & Saf. Code, § 101040.

²⁴ Health & Saf. Code, § 101310.

²⁵ Gov. Code, § 8630, subds. (a) & (b).

²⁶ Gov. Code, § 8630, subd. (c).

²⁷ Gov. Code, § 8630, subd. (d).

²⁸ Gov. Code, § 8558, subd. (b).

²⁹ Gov. Code, § 8625.

³⁰ Gov. Code, § 8626.

³¹ *Id.*

³² *Id.*

Upon signing the proclamation, the Governor has, to the extent he deems it necessary, complete authority over all agencies of the state government and the right to exercise within the designated area all police power vested in the state by the Constitution and laws of the State of California in order to protect the health and safety and preserve the lives and property of the people of the state.³³ Thus, the Governor could impose curfews and other measures to protect the public, even if the local authorities failed to do so.

As with a *local emergency*, the local health officer may, during a proclaimed *state of emergency*, abate any public health hazard caused by the disaster if necessary to protect and preserve the public health.³⁴

Under all emergencies identified in the ESA, in addition to using funds appropriated to support activities under the ESA, the Governor can make expenditures from any fund legally available in order to deal with actual or threatened conditions of the emergency.³⁵

State of War Emergency

A *state of war emergency* is the condition which exists immediately, with or without a proclamation by the Governor, whenever California or the nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.³⁶

Orders and Regulations

The Governor has the authority to make, amend, and rescind orders and regulations necessary to carry out the provisions of the ESA.³⁷ If issued during a proclaimed *state of emergency*, the orders and regulations must be in writing and take immediate effect.³⁸ Again, widespread publicity and notice is required.³⁹ Further, if the orders or regulations are issued during a proclaimed *state of emergency*, they terminate upon termination of the emergency.⁴⁰

An example of a specific order authorized by the ESA is an order directing a state agency or agencies to utilize state personnel, equipment, and facilities for the performance of any and all activities consistent with the direction of the Cal OES and the State of California Emergency Plan

³³ Gov. Code, § 8645.

³⁴ Gov. Code, § 8626.

³⁵ Health & Saf. Code, §101040.

³⁶ Gov. Code, § 8558, subd. (a).

³⁷ Gov. Code, §§ 8567, subd. (a), 8627.

³⁸ Gov. Code, § 8567, subd. (b).

³⁹ Gov. Code, § 8567, subd. (a).

⁴⁰ Gov. Code, § 8567, subd. (b).

(SEP). The agencies may expend any of the funds that have been appropriated to them to perform these activities, regardless of the purpose for which the money was originally appropriated.⁴¹

CDPH has powers related to communicable disease control that are independent of an emergency proclamation. For example, whenever the public health is menaced, CDPH has the authority to control and regulate the actions of local health officials.⁴² At all times, CDPH has the authority to take measures necessary to ascertain the nature of a reported disease and prevent its spread.⁴³ This could include orders for isolation, quarantine or “social distancing.” CDPH also has specific authority to quarantine, isolate, inspect, and disinfect persons, animals, houses, rooms, other property, places, cities, or localities, whenever in its judgment the action is necessary to protect or preserve the public health.⁴⁴ Therefore, it is possible that CDPH may exercise these powers in addition to the roles and responsibilities assigned under the ESA and the SEP.

Under the CA-ESF 8 Annex to the SEP, EMSA and CDPH are designated as “lead departments.” EMSA has a statutory duty to respond to any medical disaster by mobilizing and coordinating EMS mutual aid resources to mitigate health problems.⁴⁵ The duties of CDPH include the administration and coordination of disaster-related public health programs, the assessment of hazards to the public’s health, and the acquisition and distribution of medical supplies and pharmaceuticals following a disaster.

One of the agencies directed to provide assistance may be the California National Guard. In such circumstances, the proclamation of a *state of emergency* may be confused with the imposition of martial law. It is possible during a proclaimed emergency that the CNG, as an agency of the State, may be directed to provide assistance to mitigate the effects of the emergency or even engage in law enforcement operations.⁴⁶ Also, under a Presidential Declaration of Major Disaster, the U.S. Department of Defense may perform emergency work. However, this is not the same as an imposition of martial law. In these circumstances, the military resources simply function in aid of the civil authorities. So long as the civil court system continues to function, there can be no imposition of martial law.⁴⁷

⁴¹ Gov. Code, § 8628

⁴² Health & Saf. Code, § 131080.

⁴³ Health & Saf. Code, § 120140.

⁴⁴ Health & Saf. Code, § 120145.

⁴⁵ Health & Saf. Code, § 1797.150.

⁴⁶ Penal Code, § 830.4.

⁴⁷ *Duncan v. Kahanamoku* (1946) 327 U.S. 304.

The ESA provides that, whenever practicable, emergency orders and regulations should be prepared in advance of the *state of emergency*.⁴⁸ Normally, adopting regulations is a time-consuming process governed by the Administrative Procedures Act.⁴⁹ However, under the ESA, orders and regulations to carry out the ESA prepared in advance are exempt from the Administrative Procedures Act.⁵⁰

Suspensions of State Law

During a proclaimed *state of emergency*, the Governor is authorized under the ESA to suspend any regulatory statute; or statute prescribing the procedure for the conduct of state business; or the orders, rules, or regulations of any state agency.⁵¹ To do so, the Governor must determine and declare that strict compliance with the statute, order, rule, or regulation would prevent, hinder, or delay the mitigation of the effects of the emergency in any way.⁵²

A regulatory statute can be defined as a statute whose purpose is to direct or govern according to a rule.⁵³ For example, a statute governing the conduct of hospitals, medical practitioners, or restaurants would be a regulatory statute. A statute for the conduct of state business would include, for example, state contracting rules. These being the only two areas of law that can be suspended, it follows that there are many laws that the Governor could not suspend, e.g. criminal statutes unrelated to regulatory programs, or statutes governing the scope of available immunities.

In addition, the Governor is authorized during a proclaimed *state of emergency* to temporarily suspend any state, county, city, or special district statute, ordinance, regulation, or rule imposing non-safety related restrictions on the delivery of food products, pharmaceuticals, and other emergency necessities distributed through retail or institutional channels, including, but not limited to, hospitals, jails, restaurants, and schools.⁵⁴ This provision differs from Government Code section 8571 in that it includes the ordinances, regulations or rules of local governments. Thus, local retail food facility or zoning requirements could be temporarily suspended to expedite the delivery of relief, provided that the suspended requirements are not reasonably related to safety.

⁴⁸ Gov. Code, § 8567, subd. (c).

⁴⁹ Gov. Code, § 11340 et seq.

⁵⁰ Gov. Code, § 8567, subd. (d).

⁵¹ Gov. Code, § 8571.

⁵² *Id.*

⁵³ See, e.g. Merriam-Webster's Online Dictionary, "regulatory."

⁵⁴ Gov. Code, § 8627.5.

Commandeering of Facilities and Personnel

During a proclaimed *state of emergency*, the Governor is authorized to commandeer or utilize any private property or personnel deemed by him necessary in carrying out the responsibilities hereby vested in him as Chief Executive of the State.⁵⁵ The one exception is that the Governor is not authorized to commandeer any newspaper, newspaper wire service, or television or radio station.⁵⁶ In all cases where private property or personnel is commandeered or used under this provision, the state must pay the reasonable value.⁵⁷ This is because the ESA regards the commandeering of specific services to be a “taking,” which under the state and federal constitutions is subject to just compensation.⁵⁸

In keeping with his power to commandeer property and personnel, the Governor is authorized to plan for the use of private services, facilities, and properties, in addition to procuring services and supplies by contract.⁵⁹ He may also provide for payment under agreed terms and conditions when necessary, as well as when these services and supplies are used.⁶⁰ However, when property is seized and used during an emergency, there is generally no time to determine the reasonable value prior to the seizure. Accordingly, the ESA provides that, before payment may be made by the state to any person in reimbursement for taking or damaging private property, or for services, the person must present a claim to the Department of General Services Government Claims Program in accordance with the provisions of the Government Code.⁶¹

The Governor’s power to commandeer is separate and distinct from the power that county sheriffs and certain peace officers have in California to command the aid of inhabitants.⁶² This power is generally known as the power of the county, or *posse comitatus*, and is limited to the taking or arrest of persons or preventing the commission of crimes when commanded by an authorized peace officer or judge. Neglect or refusal to provide such aid is an infraction subject to fine.⁶³

The Governor’s power to commandeer also appears to be distinct from the power of the state to impress persons into service.⁶⁴ Cal OES is required to develop a plan for state and local

⁵⁵ Gov. Code, § 8572.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Cal. Const., Art. 1, § 19; U.S. Const., Amend. 5.

⁵⁹ Gov. Code, §§ 8570, subd. (i), and 8646, subds. (b) & (c).

⁶⁰ Gov. Code, § 8570, subd. (i).

⁶¹ Gov. Code, § 8652.

⁶² Gov. Code, § 26604.

⁶³ Penal Code, § 150.

⁶⁴ Gov. Code, § 204.

governmental agencies to utilize volunteer resources during a *state of emergency* proclaimed by the Governor.⁶⁵ During a *state of emergency*, the Governor has 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 in order to effectuate the purposes of the ESA.⁶⁶ Government Code section 204 provides that the state may require the services of persons, with or without compensation, in maintaining the public peace and in protecting life and property from fire, pestilence, wreck, and flood. Accordingly, the Governor could exercise his/her authority to issue orders and regulations to impress people into service in the event of a disaster.⁶⁷

Whether a person is a volunteer or impressed into service, he or she is referred to as a “disaster service worker.”⁶⁸ Public employees are, by law, “disaster service workers.”⁶⁹ Disaster service workers receive limited immunity from civil liability for their good faith actions in responding to the emergency, and are entitled to worker’s compensation for injuries suffered as a disaster service worker.^{70,71}

The categories of disaster service work are set forth in regulation; included is a category for “Medical and Environmental Health.”⁷² The prescribed duties are:

“Staff casualty stations, establish and operate medical and public health field units; assist in hospitals, out-patient clinics, and other medical and public health installations; maintain or restore environmental sanitation; assist in preserving the safety of food, milk, and water and preventing the spread of disease; perform laboratory analysis to detect the presence and minimize the effects of nuclear, chemical, biological, radiological or other hazardous agents.”⁷³

⁶⁵ Gov. Code, § 8599.

⁶⁶ Gov. Code, § 8627.

⁶⁷ Gov. Code, § 8567.

⁶⁸ Gov. Code, § 3101; Labor Code, § 3211.92.

⁶⁹ Gov. Code, §3100.

⁷⁰ Civil Code, § 1714.5, subd. (b).

⁷¹ Cal. Code Regs., tit. 19, § 2573.3.

⁷² Cal. Code Regs., tit. 19, § 2572.1, subd. (j).

⁷³ *Id.*

Health Care Providers from Other States (Emergency Assistance)

If an emergency overwhelms the response capabilities of California health care practitioners, out-of-state health care providers may provide assistance to California at the request of and under the medical control of the Director of EMSA.⁷⁴ Furthermore, the Director of EMSA shall designate the areas to which they may be deployed.⁷⁵ This statute applies to those health care practitioners who would ordinarily fall under the authority of the Department of Consumer Affairs such as nurses, doctors, nurse practitioners, physician assistants, etc.⁷⁶ This section does not apply to health care practitioners that would fall under the Health and Safety Code, such as Emergency Medical Technicians (EMTs), Advanced Emergency Medical Technicians (AEMTs), and paramedics.⁷⁷

The following requirements apply to out-of-state EMS providers rendering mutual aid to California:

Paramedic

An out-of-state Paramedic may temporarily practice in California provided all of the following conditions are met:

- 1) They are in possession of a valid Paramedic license/certificate issued by another state or country;
- 2) They are approved by the medical director of the local EMS agency to practice in the jurisdiction of the local EMS system;
- 3) They restrict the scope of practice to that for which they are licensed or certified; and
- 4) They will observe any limits placed on their scope of practice by the medical director of the local EMS agency, should the local medical director exercise that option.⁷⁸

Advanced Emergency Medical Technician (AEMT)

There is no provision in either California statute or regulations for non-California AEMTs to temporarily practice in California.

⁷⁴ Bus. & Prof. Code, § 900.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Cal. Code Regs., tit. 22, § 100145, subd. (c).

Emergency Medical Technician (EMT)

An out-of-state EMT may temporarily practice in California provided all of the following conditions are met:

- 1) They are requested by the National Registry of Emergency Medical Technicians or licensed or certified in another state under the jurisdiction of a branch of the Armed Forces including the U.S. Coast Guard, National Park Service, U.S. Department of the Interior-Bureau of Land Management, or the U.S. Forest Service; or
- 2) They are approved by the medical director of the local EMS agency to practice in the jurisdiction of the local EMS system;
- 3) They restrict their scope of practice to that for which they are licensed or certified; and
- 4) They will observe any limits placed on their scope of practice by the local medical director, should the local medical director exercise that option.⁷⁹

CALIFORNIA HEALTH AND SAFETY CODE

Local Health Emergency

A **local health emergency** is the only type of emergency that a local health officer can declare or proclaim, absent a delegation from the local governing body under the ESA to proclaim a *local emergency*. A declared *local health emergency* provides a limited range of expanded powers. A local health officer may declare a *local health emergency* when:

- 1) There is a release or spill of material that is subsequently determined to be hazardous or medical waste, or
- 2) There is an “imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent,” such as in a suspected biological or radiological weapons attack.⁸⁰

To make a declaration under paragraph one, above, the local health officer must determine that (1) there has been an uncontained release or spill of material, and (2) the material is or may become hazardous or medical waste, i.e., because of quantity, concentration, or physical, chemical, or infectious characteristics may do any of the following: (a) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating

⁷⁹ Cal. Code Regs., tit. 22, § 100062, subd. (c).

⁸⁰ Health & Saf. Code, § 101080.

reversible, illness, or (b) pose a substantial present or potential hazard to human health or environment.⁸¹

To make a declaration under paragraph two above, the local health officer must determine that a viable threat exists that a contagious, infectious, or communicable disease; chemical agent; noncommunicable biological agent (e.g., anthrax); toxin (e.g., botulin toxin); or a radioactive agent is or will be introduced into his/her jurisdiction or any portion thereof.

The powers granted to the local health officer depend upon the basis for the declaration. If the *local health emergency* is declared under paragraph one above, i.e., in response to a release or spill of hazardous material, the local health officer may:

- (1) Require any person or organization, including anyone that had custody or was transporting the material, to furnish any information known relating to the properties, reactions, and identity of the material that has been released or spilled in sufficient detail to allow the local health officer to take action to abate the *local health emergency*;
- (2) Share all relevant information with state or local agencies responding to the *local health emergency* or to medical and other professional personnel treating victims of the *local health emergency*; and
- (3) Sample, analyze, or otherwise determine identifying and other technical information relating to the *local health emergency* as necessary to respond to or abate the *local health emergency* and protect the public health.⁸²

If the *local health emergency* is declared under paragraph two above, it is unclear whether the local health officer acquires any specific powers. Subdivision (a)(1) of Health and Safety Code section 101085 specifically applies only to a release or spill of hazardous material, and subdivisions (a)(2) and (a)(3) could be construed to apply only to information gathered regarding such a release or spill.

However, a broader reading of Health and Safety Code section 101085(a) suggests that subdivisions (a)(2) and (a)(3) may apply in the event a viable threat exists that a contagious, infectious, or communicable disease; chemical agent; noncommunicable biological agent (e.g., anthrax); toxin (e.g., botulin toxin); or a radioactive agent is or will be introduced into the local health officer's jurisdiction. This would allow the local health officer to share information about the agent with other responding agencies or medical personnel, and to sample and analyze the agent.

⁸¹ Health & Saf. Code, §§ 101075, 101080.

⁸² Health & Saf. Code, § 101085, subd. (a).

Under either scenario, the local health officer may issue an order to first responders authorizing them to immediately isolate exposed individuals that may have been exposed to biological, chemical, toxic, or radiological agents that may spread to others, provided that the period of isolation does not exceed two hours, the order is both necessary and the least restrictive means of preventing exposure, and the local health officer has established a publicly available memorandum of understanding with first responders in his or her jurisdiction, in consultation with the Medical and Health Operational Area Coordinator, regarding where and how exposed subjects will be held pending decontamination.⁸³ The issuance of such an order, however, is not dependent upon the declaration of a *local health emergency*. It may be issued in conjunction with such a declaration, but does not need to be.

A *local health emergency* declaration remains in effect for only seven days unless ratified by the board of supervisors or city council, whichever is applicable to the jurisdiction.⁸⁴ The board of supervisors or city council, as applicable, must review the declaration at least every 14 days until the local health emergency is terminated.⁸⁵ Effective January 1, 2019, the local governing body must review the health emergency declaration at least every 30 days until the local health emergency is terminated.⁸⁶

During a declared *local health emergency*, (1) other political subdivisions have full power to provide mutual aid to any area affected by a *local health emergency* in accordance with local ordinances, resolutions, emergency plans, or agreements, (2) state agencies may provide mutual aid, including personnel, equipment, and other available resources, to assist political subdivisions during a *local health emergency*, or in accordance with mutual aid agreements, or at the direction of the Governor, (3) the cost of extraordinary services incurred by political subdivisions in executing mutual aid agreements in a *local health emergency* constitute a legal charge against the state when approved by the Governor, and (4) the immunities provided under the ESA to physicians, hospitals, pharmacists, respiratory care practitioners, nurses, and dentists apply.^{87,88,89,90}

Additionally, during a *local health emergency* declared by the county health officer, the local health officer has supervision and control over all environmental health and sanitation

⁸³ Health & Saf. Code, § 101080.2.

⁸⁴ Health & Saf. Code, § 101080.

⁸⁵ *Id.*

⁸⁶ Stats. 2018, ch. 990, § 4 (A.B. 2238); Stats. 2018, ch. 424, § 5 (S.B. 1495).

⁸⁷ Health & Saf. Code, § 101085, subd. (b)(1).

⁸⁸ Health & Saf. Code, § 101085, subd. (b)(2).

⁸⁹ Health & Saf. Code, § 101085, subd. (b)(3).

⁹⁰ Health & Saf. Code, § 101085, subd. (c); Gov. Code, § 8659.

programs and personnel employed by the county, even in those counties that have bifurcated their public health and environmental health departments.⁹¹

Recently, local health emergencies have been proclaimed in response to large fires that occurred in California that created substantial debris fields on private and public property, including hazardous waste and other forms of debris. The declaration of a local health emergency due to imminent threat to public health can trigger certain state or federal relief, such as the removal of debris from private property.⁹² This determination, coupled with other powers of a local or state jurisdiction, allow the immediate removal of debris to protect public health and safety, and provide liability protection for the removal of debris on private property.

ROLES AND RESPONSIBILITIES

Board of Supervisors/City Council

The governing body, whether the board of supervisors of a county or city and county, or the city council of any city, is at all times required to take measures as may be necessary to preserve and protect the public health in their respective jurisdiction.⁹³ This duty applies regardless whether a *local emergency* has been proclaimed.

The governing body of a city, county, or city and county, or a designee may proclaim a *local emergency* under the Emergency Services Act (ESA), provided that the criteria for such a proclamation are satisfied.⁹⁴ The governing body must ratify a *local emergency* proclaimed by any designated official under the ESA within seven days.⁹⁵ Furthermore, the governing body must review the need for continuing the *local emergency* at least every 30 days until the governing body terminates the *local emergency*.⁹⁶ Under a proclaimed *local emergency*, the board of supervisors or city council, or designated officials, may promulgate orders and regulations necessary to provide for the protection of life and property, including orders for curfew.⁹⁷

If a local health officer proclaims a *local health emergency* under Health and Safety Code § 101080 (see following section), the governing body must ratify the *local health emergency*

⁹¹ Health & Saf. Code, § 101310.

⁹² Cal. Code of Regs., tit. 19, § 2925; FEMA, *Public Assistance Program and Policy Guide*, FP 104-009, April 2018, p. 54; 44 CFR §§ 206.244, 206.225; Stafford Act §§ 403, 407; 42 U.S.C. § 5173.

⁹³ Health & Saf. Code, §§ 101025, 101450.

⁹⁴ Gov. Code, § 8630.

⁹⁵ Gov. Code, § 8630, subd. (b).

⁹⁶ Gov. Code, § 8630, subd. (c).

⁹⁷ Gov. Code, § 8634.

within seven days, and must periodically (at least every 30 days) review that declaration until the health emergency is terminated.^{98, 99}

Local Health Officer

A local health officer has the power to take measures as may be necessary to prevent the spread or occurrence of additional cases of communicable disease in his/her jurisdiction.¹⁰⁰ This could include orders for isolation, quarantine or “social distancing.” The exercise of this power does not depend upon a declaration or proclamation of emergency, and continues after a proclamation of emergency, but is limited to the control of communicable disease. A full discussion of this authority can be found in the *Health Officer’s Practice Guide to Communicable Disease Control*.¹⁰¹

Whenever a calamity, including a flood, storm, fire, earthquake, explosion, accident, or other disaster, creates an immediate menace to the public health, the local health officer may close the area where the menace exists by means of ropes, markers, or guards to any and all persons not authorized by the health officer to enter or remain within the enclosed area.¹⁰²

A local health officer may declare a *local health emergency* in response to the release of hazardous material or medical waste that the local health officer determines poses an immediate threat to public health. The local health officer may also declare a *local health emergency* whenever there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent.¹⁰³ The local health officer acquires limited powers to acquire and share information as a consequence, and may order first responders to temporarily isolate persons thought to be exposed and who may spread the suspected biological, chemical, toxic, or radiological agent to others, even though no case of disease has yet occurred.^{104,105}

If a *local emergency* or *state of emergency* is proclaimed under the ESA, a local health officer may abate any public health hazard caused by a disaster to protect the public health.¹⁰⁶ During a *local emergency* proclaimed under the ESA that is health-related, the local health officer has supervision and control over all environmental health and sanitation programs and personnel

⁹⁸ Health & Saf. Code, §101080.

⁹⁹ Stats. 2018, ch. 990, § 4 (A.B. 2238); Stats. 2018, ch. 424, § 5 (S.B. 1495).

¹⁰⁰ Health & Saf. Code, § 120175.

¹⁰¹ [Health Officer Practice Guide for Communicable Disease Control in California \(2013\)](#)

¹⁰² Penal Code, § 409.5, subd. (a).

¹⁰³ Health & Saf. Code, § 101080.

¹⁰⁴ Health & Saf. Code, § 101085.

¹⁰⁵ Health & Saf. Code, § 101080.2.

¹⁰⁶ Health & Saf. Code, § 101040.

employed by the county, even in those counties that have bifurcated their public health and environmental health departments.¹⁰⁷

The local health officer may serve jointly with the administrator of the LEMSA in the role of the MHOAC. If they are unable to serve jointly, they may jointly appoint another individual to fulfill this role.¹⁰⁸

The local health officer may have other roles during a proclaimed emergency as provided in the Operational Area Emergency Plan.

Environmental Health Services

A county board of supervisors may, with the concurrence of the director, transfer the total function of providing environmental health and sanitation services and programs to a comprehensive environmental agency of the county other than the county health department.¹⁰⁹ Under such circumstances, whenever a power is granted to, or a duty is imposed upon, a county health officer or county health department pertaining to environmental health and sanitation services and programs transferred by the board of supervisors, these powers and duties shall be delegated by the local health officer to the director of environmental health, who shall thereafter administer these powers and duties.¹¹⁰ This allows the Director of Environmental Health to issue evacuation orders for hazardous materials incidents and other immediate health threats, isolate and deny entry, or quarantine as necessary.

Governor

The Governor, or the Director of the California Governor's Office of Emergency Services (Cal OES) if the Governor is unavailable, may proclaim a *state of emergency*, provided that the criteria for such a proclamation are satisfied.¹¹¹ Furthermore, during a *state of emergency*, the Governor has the exclusive authority to suspend any regulatory statute; 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

¹⁰⁷ Health & Saf. Code, § 101310.

¹⁰⁸ Health & Saf. Code, § 1797.153.

¹⁰⁹ Health & Saf. Code, § 101275.

¹¹⁰ Health & Saf. Code, § 101280, subd. (b).

¹¹¹ Gov. Code, §§ 8625, 8588.

the emergency.¹¹² Finally, the Governor is authorized to commandeer or utilize any private property or personnel deemed necessary in carrying out his responsibilities.¹¹³

California Health and Human Services Agency

Under the SEP, CHHS is designated as the lead agency for the development and implementation of CA-ESF 8. CHHS has in turn designated CDPH and the EMSA as the co-lead departments charged with operationalizing CA-ESF 8. On behalf of CHHS, CDPH and EMSA coordinate public health and medical activities and services statewide in support of local jurisdiction resource needs for preparedness, response, and recovery from emergencies and disasters.¹¹⁴ CDPH and EMSA, with support from Cal OES, bring together supporting state agencies, departments, and stakeholders from the public and private sectors to develop and maintain a functional annex to the SEP. The CA-ESF 8 Annex to the SEP contains the concept of operations for Public Health and Medical response to emergencies.

California Department of Public Health

CDPH has the authority to control and regulate the actions of local health officials when in its judgment the public health is menaced.¹¹⁵ At all times, CDPH has the authority to take measures as necessary to ascertain the nature of a reported disease and prevent its spread.¹¹⁶ This could include orders for isolation, quarantine or “social distancing.” CDPH also has specific authority to quarantine, isolate, inspect, and disinfect persons, animals, houses, rooms, other property, places, cities, or localities, whenever in its judgment the action is necessary to protect or preserve the public health.¹¹⁷ The exercise of these powers does not depend upon a declaration or proclamation of emergency, but is limited to the control of communicable disease.

The Director of CDPH may declare a *health emergency* for a hazardous material release or the imminent and proximate threat of a chemical, biological or radiological attack and acquires limited powers to acquire and share information as a consequence.¹¹⁸

In the CA-ESF 8 Annex to the SEP, CDPH is designated as a co-lead department (together with EMSA) responsible for facilitating the development of the CA-ESF 8 Annex and implementing

¹¹² Gov. Code, §§ 8567, 8571.

¹¹³ Gov. Code, § 8572.

¹¹⁴ State of California Emergency Plan, Section 13, Exhibit 13-1.

¹¹⁵ Health & Saf. Code, § 131080.

¹¹⁶ Health & Saf. Code, § 120140.

¹¹⁷ Health & Saf. Code, § 120145.

¹¹⁸ Health & Saf. Code, §§ 101080, 101085.

operational processes to support state-level ESF 8 coordination.¹¹⁹ Further information on the roles and responsibilities of CDPH can be found in the SEP in Section 14.4.7. These duties include the administration and coordination of disaster-related public health programs, the assessment of hazards to the public's health, and the acquisition and distribution of medical supplies and pharmaceuticals following a disaster.

The State Public Health Officer and the Director of EMSA may jointly appoint a RDMHC for each mutual aid region of the state.¹²⁰ Furthermore, CDPH and EMSA jointly support a Regional Disaster Medical and Health Specialist (RDMHS) for each of the six mutual aid regions who provides expertise and operational support to the RDMHC Program.

Emergency Medical Services Authority (EMSA)

In the CA-ESF 8 Annex to the SEP, EMSA is designated as a co-lead department (together with CDPH) responsible for facilitating the development of the CA-ESF 8 Annex and implementing operational processes to support state-level ESF 8 coordination.¹²¹ EMSA coordinates medical and hospital preparedness with other local, state and federal agencies and departments having responsibilities relating to disaster response. EMSA responds to any medical disaster by mobilizing and coordinating mutual aid resources and state mobile medical assets to mitigate health problems.¹²²

As previously discussed, during a *state of emergency* that overwhelms the response capabilities of California's health care practitioners, the Director of EMSA may request the services of certain health care practitioners licensed in another state or territory, and serves as the medical control over these practitioners.¹²³ This statute applies to those health care practitioners who are licensed and would ordinarily fall under the authority of the Department of Consumer Affairs such as nurses, doctors, nurse practitioners, physician assistants, etc.¹²⁴ This section does not apply to health care practitioners that would fall under the Health and Safety Code, such as Emergency Medical Technicians (EMTs), Advanced Emergency Medical Technicians (AEMTs), and paramedics.¹²⁵

¹¹⁹ California Emergency Support Function 8 Public Health and Medical Annex, Executive Summary

¹²⁰ Health & Saf. Code, § 1797.152.

¹²¹ California Emergency Support Function 8 Public Health and Medical Annex, Executive Summary

¹²² State of California Emergency Plan, Section 14.12.10; Health & Saf. Code, § 1797.150.

¹²³ Bus & Prof. Code, § 900.

¹²⁴ *Id.*

¹²⁵ *Id.*

Local Emergency Medical Services Agency (LEMSA)

The administrator of the LEMSA may serve jointly with the local health officer in the role of the MHOAC. If they are unable to serve jointly, they may jointly appoint another individual to fulfill this role.¹²⁶ The administrator or medical officer of the LEMSA may have other roles during a proclaimed emergency as provided in the operational area emergency plan.

Regional Disaster Medical and Health Coordination (RDMHC) Program

The Director of EMSA and the State Public Health Officer, i.e., the Director of CDPH, may jointly appoint a RDMHC for each mutual aid region of the state.¹²⁷

The Regional Disaster Medical and Health Coordinator (RDMHC) is authorized to develop plans for the provision of medical or public health mutual aid among the counties in the region, and cooperates in the development of a medical and health disaster plan by the medical and health operational area coordinator (MHOAC) for each operational area.^{128,129} During a proclaimed *state of emergency* or *state of war emergency*, the RDMHC in affected regions coordinates with the MHOACs of affected operational areas.¹³⁰ At the request of EMSA, CDPH, or Cal OES, a RDMHC in a region that is unaffected by the disaster may coordinate the acquisition of requested mutual aid resources from the jurisdictions in the region.¹³¹

Medical and Health Operational Area Coordination (MHOAC) Program

The county health officer and the LEMSA administrator may jointly serve at the operational area level as the Medical and Health Operational Area Coordinator (MHOAC).¹³² If the county health officer and the LEMSA administrator are unable to fulfill the duties of the MHOAC, they may jointly appoint another individual to fulfill these responsibilities.¹³³

The MHOAC, if appointed, is responsible for ensuring the development of a medical and health disaster plan for the operational area that follows SEMS and NIMS.¹³⁴ The MHOAC must recommend to the office of emergency services a medical and health disaster plan for the

¹²⁶ Health & Saf. Code, § 1797.153.

¹²⁷ Health & Saf. Code, § 1797.152.

¹²⁸ Health & Saf. Code, § 1797.152, subd. (c).

¹²⁹ Health & Saf. Code, § 1797.153, subd. (a).

¹³⁰ Health & Saf. Code, § 1797.153, subd. (d).

¹³¹ Health & Saf. Code, § 1797.152, subd. (b).

¹³² Health & Saf. Code, § 1797.153, subd. (a).

¹³³ Health & Saf. Code, § 1797.153.

¹³⁴ *Id.*

provision of medical and health mutual aid within the operational area.¹³⁵ That plan will describe the additional roles, if any, that the local health officer and LEMSA administrator will play during a declared emergency.

The MHOAC is required to develop the plan in cooperation with the county office of emergency services, local public health department, local office of environmental health, local department of mental health, local EMS agency, local fire department, RDMHC, and regional office of Cal OES. Thus, to the extent that the plan in counties with a MHOAC describes additional roles for these officials during an emergency beyond those described by law, it will be largely due to input provided by these officials to the MHOAC during the plan development phase.

If an operational area does not have a MHOAC, the operational area will still have an emergency plan. The extent to which the local health officer and LEMSA administrator have a role during an emergency beyond their role described by law may depend upon the extent to which they provided input during the development of the emergency plan.

During a declared local, state or federal emergency, the MHOAC assists the local OES operational area coordinator in the coordination of medical and health disaster resources within the operational area, and is the point of contact in that operational area for coordination with the RDMHC.¹³⁶

Mutual Aid

A key provision of California's emergency management system is the provision of mutual aid. Mutual aid means voluntary aid and assistance by the provision of services and facilities, including but not limited to: fire, police, medical and health, communication, transportation, and utilities.¹³⁷ The ESA authorizes the *California Disaster and Civil Defense Master Mutual Aid Agreement* (MMAA), which requires that each party develop a mutual aid operational plan that provides for the effective mobilization of all its resources and facilities, both public and private, to cope with any type of disaster, and the establishment of *mutual aid regions* for the more effective application, administration, and coordination of mutual aid and other emergency-related activities.^{138,139} A map of California's mutual aid regions appears at the end of this chapter.

¹³⁵ Health & Saf. Code, § 1797.153 (a).

¹³⁶ *Id.*

¹³⁷ Cal. Code Regs., tit. 19, § 2415, subd. (a).

¹³⁸ Gov. Code, §§ 8561, 8617; California Disaster and Civil Defense Master Mutual Aid Agreement, ¶1.

¹³⁹ Gov. Code, § 8600, subd. (a).

Cal OES is required to coordinate response and recovery operations in each of the mutual aid regions.¹⁴⁰ Consequently, California's mutual aid system allows for the progressive mobilization of resources to/from emergency response agencies, local governments, operational areas, regions, and the state with the intent of providing adequate responses to requesting agencies.¹⁴¹ The roles of CDPH and EMSA during a proclaimed emergency consist largely of the coordination of mutual aid to be deployed to the affected operational areas.

SEMS designates five levels for emergency response:

- 1) Field
- 2) Local Government
- 3) Operational Area
- 4) Regional
- 5) State¹⁴²

For purposes of SEMS and the ESA, an operational area consists of a county and all political subdivisions within the county area.¹⁴³ Under SEMS, the operational area manages and/or coordinates information, resources, and priorities among local governments within the operational area and serves as the coordination and communication link between the local government level and the regional level.¹⁴⁴ Thus, at the operational area level, health and medical officials may fulfill a management function, or participate in multi-agency coordination, depending upon his/her role described in the operational area emergency plans.

At the operational area level, the county government serves as the lead agency, unless another member agency of the operational area assumes that responsibility by written agreement with county government.¹⁴⁵ The Board of Supervisors may elect the office of county director of emergency services to be held *ex officio* by the county sheriff.¹⁴⁶ The county director of emergency services shall have the duties prescribed by state law and executive order, the MMAA, mutual aid operational plans, and by county ordinances and resolutions.¹⁴⁷

¹⁴⁰ Gov. Code, § 8600, subd. (b).

¹⁴¹ Cal. Code Regs., tit. 19, § 2415, subd. (b).

¹⁴² Cal. Code Regs., tit. 19, § 2403, subd. (b).

¹⁴³ Gov. Code, §§ 8559(b), 8605.

¹⁴⁴ Cal. Code Regs., tit. 19, § 2403, subd. (b)(3).

¹⁴⁵ Cal. Code Regs., tit. 19, § 2409, subd. (d).

¹⁴⁶ Gov. Code, §§ 26620, 26622, 26623, and 26624.

¹⁴⁷ Gov. Code, § 26621.

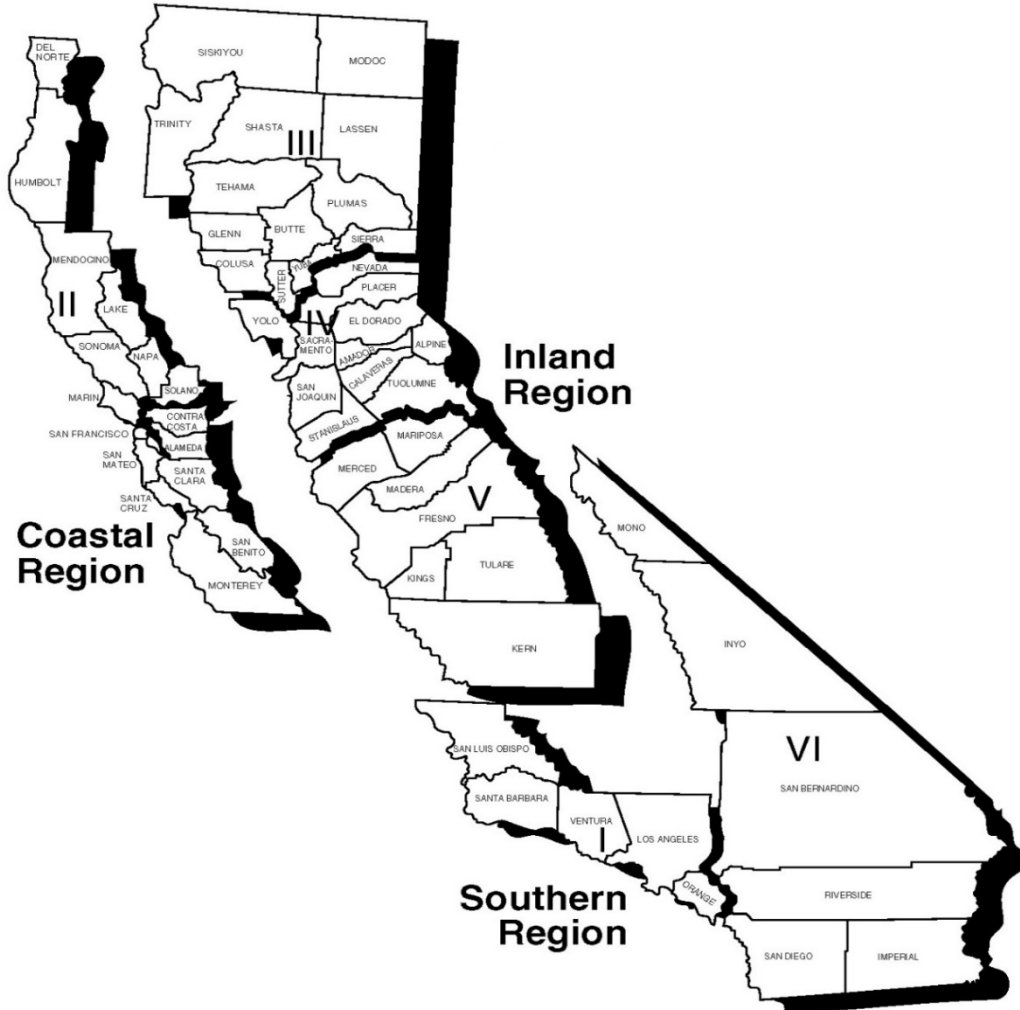
Under SEMS, decisions about the allocation of scarce resources are made by management, which is responsible for overall emergency policy and coordination.¹⁴⁸ At the operational area level, the lead agency is required to use multi-agency or inter-agency coordination to facilitate decisions for overall operational area level emergency response activities.¹⁴⁹ “Multi-agency or interagency coordination” means the participation of agencies and disciplines involved at any level of the SEMS organization working together in a coordinated effort to facilitate decisions for overall emergency response activities, including the sharing of critical resources and the prioritization of incidents.¹⁵⁰ Accordingly, the lead agency must make allocation decisions based upon input from officials participating in multi-agency coordination. Unless the local health officer or LEMSA administrator occupies a management role under the operational area emergency plan, decisions about resource allocation may be made by the sheriff or other officials assigned the management role. The local health officer and/or LEMSA administrator, or the MHOAC, may provide input as a participant in a multi-agency coordination meetings.

¹⁴⁸ Cal. Code Regs., tit. 19, § 2403, subd. (c)(1).

¹⁴⁹ Cal. Code Regs., tit. 19, § 2409, subd. (e)(3).

¹⁵⁰ Cal. Code Reg., tit. 19, § 2402, subd. (o).

California's Six Mutual Aid Regions



ACRONYMS

AEMT	Advanced Emergency Medical Technician
CA-ESF 8	California Emergency Support Function 8 (Public Health and Medical)
CAHAN	California Health Alert Network
Cal OES	California Governor’s Office of Emergency Services
CDPH	California Department of Public Health
CHHS	California Health and Human Services Agency
DSW	Disaster Service Worker
EMSA	California Emergency Medical Services Authority
EMT	Emergency Medical Technician
ESA	Emergency Services Act
LEMSA	Local Emergency Medical Services Agency
LHD	Local Health Department
LHO	Local Health Officer
MHCC	Medical and Health Coordination Center
MHOAC	Medical and Health Operational Area Coordinator
RDMHC	Regional Disaster Medical and Health Coordinator
SEMS	Standardized Emergency Management System
SEP	State (of California) Emergency Plan