



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: MEMBERS OF THE SPECIAL COMMITTEE ON DISASTER PREPAREDNESS
PLANNING

FROM: Pam Shannon and Dick Sweet, Senior Staff Attorneys, and Jessica Karls, Staff Attorney

RE: Responses to Requests for Information

DATE: January 9, 2007 (Revised January 10, 2007)

During the discussion of Memo No. 2, *Potential Recommendations Submitted for the Special Committee's Consideration*, at the December 13, 2006 meeting, staff was asked to obtain additional information relating to several items in the memorandum about which the committee was considering making recommendations.

The enclosed materials are items received in response to staff requests to state agencies and others for information and feedback about the potential recommendations. Many of these items were not received in time to be included in the January 4, 2007 mailing. In addition to materials provided by agencies and others, several items were prepared by staff.

At the January 10, 2007 meeting, agency staff may be available to comment and answer questions on the materials submitted. The materials include the following:

1. E-mail from the Department of Workforce Development (DWD) on the issues of:
(a) required use of vacation leave for quarantined employees; (b) guaranteeing job security for those quarantined and unable to work; and (c) tax incentives for employers who continue to pay wages to quarantined employees.
2. E-mail from DWD on income continuation during widespread emergencies.
3. A letter with several attachments from the Department of Health and Family Services.
4. E-mail from the Department of Natural Resources regarding whether environmental impact statement (EIS) requirements may be waived during public health emergencies.

5. E-mail from the Department of Agriculture, Trade and Consumer Protection with draft language on carcass disposal and response to questions regarding waiver of EIS requirements.
6. E-mail from four county emergency management agencies in response to December 22, 2006 letter from committee recommending emergency planning and coordination with private sector agencies.
7. Staff information from Wisconsin Vital Records about signing death certificates during emergencies.
8. E-mail from Legislative Council staff about holding certain proceedings during emergencies without all parties being present.
9. Letter from Wisconsin Emergency Management (WEM) regarding: (a) WEM regional office support; (b) uniformity of regions; (c) mass evacuation planning issues; and (d) additional possible legislative initiatives.
10. Information from local government associations about Open Meeting Laws during emergencies.
11. E-mail from William Black, Department of Regulation and Licensing, regarding variances to Pharmacy Examining Board statutes and rules during emergencies.
12. Letter from the Office of Justice Assistance regarding mutual aid agreements.

PS:RNS:JK:wu

Enclosures

Karls, Jessica

From: Ortiz, Jennifer A - DWD
Sent: Thursday, January 04, 2007 12:09 PM
To: Karls, Jessica
Cc: Richard, JoAnna - DWD; Loehe, Rex - DWD
Subject: RE: Employment Issues During Emergency

Point 1: Required Use of Vacation leave for Quarantined employees.

Wisconsin labor standards law and regulations do not need to be altered to permit employers to do this right now.

On the other hand, under the Civil Rights Laws employers with less than 50 employees are not subject to the Wisconsin Family and Medical Leave Law, so no changes in the Family and Medical Leave Law (FMLA) would be necessary to give employers of less than 50 the right to require employees to use their vacation time during a prolonged emergency.

For employers of 50 or more, the Wisconsin Family and Medical Leave Law requires that employees with a serious health condition be allowed to decide whether to use vacation, other leave or unpaid leave. The Family and Medical Leave Law would only apply to employees who actually have a serious health condition, not to employees who are quarantined for other reasons.

If the legislature wishes to allow employers to require the use of vacation for employees who are subject to the Wisconsin Family and Medical Leave Law, it could carve out a narrow exception to the substitution provision allowing the requirement for using vacation during an emergency. They would need to amend ss.103.10 (5) (b) which currently states that the employee may substitute paid or unpaid leave provided by the employer for family and medical leave. The courts have interpreted this provision as giving the right to require substitution to the employee only, not the employer. <http://www.wicourts.gov/html/ca/00/00-0644.htm>

Point 2: Guarantee job security for people who are unable to work because they are quarantined or isolated by a public health agency.

This is not a wage and hour issue. To make this change would require passage of legislation. Language to accomplish this goal could be added to various parts of the statute depending upon who the Legislature would like to enforce the provision. For example, it could be added to the Fair Employment law as an additional basis for illegal discrimination. ERD then would simply use the same administrative process already in place to deal with the complaints. It could be added as a one liner to the statutes administered by the Department of Health and Family Services dealing with pandemics, etc. and utilize a private right of action for enforcement.

Point 3: Tax incentives for employers who continue to pay wages to quarantined employees.

This is a tax issue and not a wage and hour issue. The issue is best addressed by the Wisconsin Department of Revenue.

I hope you find the information helpful. Please let me know if you have any questions.

Jennifer Ortiz
 ERD Administrator
 266-0946

From: Karls, Jessica [<mailto:Jessica.Karls@legis.wisconsin.gov>]
Sent: Wednesday, January 03, 2007 11:21 AM
To: Ortiz, Jennifer A
Cc: Sweet, Richard; Shannon, Pam

Subject: Employment Issues During Emergency

Jennifer,

JoAnna Richard forwarded to you some recommendations made by the Special Committee on Disaster Preparedness Planning. The recommendations are listed below. We had asked for some input as to what statutory changes would be required to implement the recommendations if the committee decides to do so. I want to follow up with you because the next committee meeting is on Wednesday, January 10th, and I will present this information at that meeting. I would greatly appreciate having this information by Friday, January 5th.

Thank you for your assistance. Please contact me with any questions.

Sincerely,

Jessica L. Karls
Staff Attorney
Wisconsin Legislative Council
(608) 266-2230

From: Karls, Jessica [<mailto:Jessica.Karls@legis.wisconsin.gov>]
Sent: Thursday, December 21, 2006 2:42 PM
To: Richard, JoAnna - DWD
Cc: Sweet, Richard; Shannon, Pam
Subject: Employment Issues During Emergency

Dear JoAnna,

Pursuant to our telephone conversation, below are recommendations from members of the Disaster Preparedness Planning Committee regarding employment issues during an emergency. The recommendations are as follows:

1. Give employers the right to require employees to use their vacation time during a prolonged emergency (for example, where a business closure or reduction in needed workforce might last longer than a week).
2. Guarantee job security for people who are unable to be at work because they are quarantined or isolated by a public health agency.
3. Provide tax breaks for employers (especially small-sized to medium-sized employers) that continue to pay workers during a pandemic if temporary business closures are recommended or ordered by a public health agency.

The Committee wants the reaction of the Wage and Hour Division to these recommendations and input regarding what statutory changes would be required to implement the changes. The next Committee meeting is January 10, 2007. Please forward this information to the appropriate person at the Wage and Hour Division. That person can contact me if he/she has any questions.

I appreciate your assistance.

Sincerely,

Jessica L. Karls
Staff Attorney
Wisconsin Legislative Council
(608) 266-2230

Karls, Jessica

From: LaRocque, Daniel J - DWD
Sent: Friday, January 05, 2007 12:46 PM
To: Karls, Jessica
Cc: Schwalbe, Tracey L - DWD
Subject: Income Continuation
Attachments: Disaster Unemployment Asst

Jessica:

As we briefly discussed, I will divide the response to your inquiry below into two parts based on two alternative assumptions:

(1) the income continuation benefits you contemplate are to be state-paid or employer-paid benefits that are funded outside UI program; and

(2) the income continuation benefits are to be paid to employees as unemployment insurance (UI) benefits out of the UI Trust Fund.

I understand the the second assumption is the more likely. Strictly speaking, a new income continuation program would not "conflict with" UI law and other programs for unemployment benefits. However, an employee's receipt of such an income continuation benefit may affect eligibility for benefits under existing programs.

Payment of income continuation as benefits outside of the UI and DUA programs

Payment of an income continuation benefit that is not a UI benefit raises the question of what effect such payments would have on UI benefits. Depending on how the income continuation program is structured, the employee's receipt of an "income continuation" payment may either have no effect (i.e., supplements UI) or have the effect of negating or reducing the employee's UI benefits.

One issue, for example, is whether the income continuation is "wages" under UI law such that receipt of the income continuation would offset UI benefits. "Wages" means every form of remuneration payable, directly or indirectly . . . by an employing unit for personal services." Wis.Stat. 108.02(26)(a). There are numerous exceptions.

Federal law provides another possible benefit to employees for loss of wages in employment due to disaster. The Disaster Unemployment Assistance program (DUA) provides benefits to employees and self-employed persons who are unable to work as a direct result of a disaster in a Presidentially-declared disaster area. I imagine you will want to study this program as you consider benefits for a "widespread emergency" or disaster. DUA is a program that addresses needs entirely not met by UI, where disaster occurs. Under the DUA requirements summarized immediately below, income continuation benefits would likely negate or reduce eligibility for benefits under the Disaster Unemployment Assistance program (DUA).

Under DUA, eligibility conditions include being a worker unemployed due to physical damage or inaccessibility to a place of employment, inability to work due to injury caused by the disaster, and "the individual is not entitled to any other unemployment compensation" from any state or federal unemployment program. 42 USCS § 5177. DUA claims are only payable if the claimant is ineligible for regular state or federal UI benefits. The unemployment must be an immediate result of the disaster and not a result of a longer chain of events precipitated by or exacerbated by the disaster. 20 CFR §625.5(c). A timely claim must be filed during a Disaster Assistance period (within 30 days) and weekly claims must continue to be filed. The state must have an agreement with the federal government to provide relief. The person must be unemployed or be an unemployed self-employed individual and must be able to work and available for work within the meaning of state UI law (unless the person is injured and disabled as a result of the disaster or is self-employed and performing services

to resume self-employment). The person cannot refuse an offer of employment or an opportunity to resume employment if offered. The person cannot be eligible for state or federal unemployment benefits (e.g., the person has insufficient qualifying wages). 20 CFR §625.4. The amount of any DUA benefits payable will be reduced by any insurance proceeds from any source for lost wages due to injury or disability unless they are not defined as compensation because such payments are based on employee contributions, by a supplemental unemployment benefit pursuant to a collective bargaining agreement, by private income protection insurance, by any workers' compensation benefit for the death of the head of a household due to the disaster, and by the prorated amount of any retirement pension or annuity under a public or private retirement plan or system or Social Security benefit to the extent such amounts would be deducted from regular state UI benefits. 20 CFR §§625.2(d) & 625.13.

Even if the income continuation program were placed outside of the UI program, the kind of benefits you contemplate may well be "unemployment compensation" that would negate eligibility for or reduce DUA benefits. See 42 USCS § 5177. The term "unemployment compensation" means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation. 26 USC 85(b).

The interpretive regulations on DUA are attached (open in Adobe):

<<Disaster Unemployment Asst>>

Payment of income continuation as a UI benefit

Separation from employment (either suspension or termination) due to a disaster or "widespread emergency" (e.g., act of terrorism or pandemic) may result in eligibility for UI benefits under current law. There are, of course, many conditions on eligibility. See Wis. Stats. Sec. 108.04. For example, in order to be eligible, a claimant must have earned sufficient amount of qualifying wages during the period of 5 or 6 calendar quarters prior to the week of separation. Wis. Stats. Sec. 108.04(4). Therefore, to the extent that UI law provides UI benefits for "employees" of "subject employers", the recommendation you are considering is perhaps, to some extent at least, redundant of UI law.

To the extent we wish to extend the UI program to cover disaster-affected employees differently, I see no particular bar to that objective. (Again, as discussed above, the extension of UI benefits will, in some instances at least, have the effect of negating or reducing benefits under DUA.) Of course, if you wish to provide more detail on the income continuation proposal, we can research these issues further.

In addition, there are benefits under other federal UI programs, for military and federal government employees, that may be affected by receipt income continuation benefits by employees in those categories.

We can address these issues in more detail if you are interested.

Dan

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State of Wisconsin

Department of Health and Family Services

Jim Doyle
Governor

Helene Nelson
Secretary

January 4, 2007

The Honorable Joan Ballweg, Chair
Special Committee on Disaster Preparedness Planning
Room 115 West, State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Representative Ballweg:

I am responding to your letter of December 26, 2006, to Patrick Cooper of the Department of Health and Family Services (DHFS) regarding your committee requests. I have tried to summarize information and perspectives that are responsive to the Special Committee's request in the limited time available.

Isolation and Quarantine: Your first request is for information regarding authority to isolate or quarantine, and responsibility for costs incurred as a result of isolation and quarantine orders that may be issued during a communicable disease outbreak.

Authority

Wisconsin law gives DHFS and local health officers' broad powers to do whatever is reasonable in controlling communicable diseases. Addendum I is a summary of Wisconsin statute relative to isolation and quarantine. In addition, isolation and quarantine of individuals or groups of persons, and the ability to prohibit public gatherings are specific duties and powers given to both state and local public health officials. They also have the ability to issue orders for confinement. In practice, these duties are left to health officers in local jurisdictions unless they are not fulfilling their roles in controlling disease transmission or if measures must be applied across several jurisdictions. In these cases, the department would exert its authority through orders signed by the State Health Officer and/or the Chief Medical Officer for communicable diseases.

While personnel in health care settings oversee patients in isolation; and school and day care staff may exclude sick individuals, it is only local health officers and the State Health Officer or designated Chief Medical Officer who have the power to issue orders for isolation or quarantine and to restrict public gatherings.

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Cost

In most cases, the person being confined bears the costs associated with confinement. They or whoever is liable for their support are responsible for all expenses associated with their medical care and daily living needs. However, if a confined person is on county assistance and there is no third party payer, the local jurisdiction must pay for costs associated with their care during confinement. Counties may also have to pay for any medical tests or examinations related to disease control, if testing is not available under fee exempt services from the State Laboratory of Hygiene. If quarantine guards are used to enforce confinement or other means of maintaining and enforcing quarantine are used, the county is also responsible for those expenses.

The state may be responsible for costs associated with quarantine in a public health emergency. Under Act 186, the state is required to reimburse local health departments for expenses incurred in quarantining persons outside of their homes during a declared public health emergency. The majority of persons requiring isolation or quarantine would be housed in their own homes; however, during large outbreaks such as pandemic influenza the potential exists for the need to place persons in group housing to more efficiently care for them. Under these circumstances the state could incur expenses related to isolation and quarantine.

In very specific situations there is federal funding available to cover costs of confining persons in transit or those who have no means of home isolation. Hospitals or other quarantine facilities may be reimbursed for the cost of isolating or quarantining an individual for up to 10 days in situations where the individual is from another country, or is from another state and whose insurance is not valid in Wisconsin, or if the individual is a homeless patient. Only those diseases on the federal quarantine list are covered by this policy (e.g., SARS, smallpox).

In summary, most costs associated with isolation and quarantine fall upon the individual being confined. During large outbreaks when large numbers of people in a community will be isolated or quarantined, local jurisdictions could encounter significant costs, depending on the number of dependent persons confined, the length of time of confinement, the extent of enforcement required, and the degree of medical interventions needed. And in cases of a public health emergency, the state could incur costs of housing large numbers of persons in community facilities.

Uniform Emergency Volunteer Health Care Practitioners Act (UEVHCPA): Your second request deals with an Act written by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Addendum II provides a review and synopsis of the Act. Similarly, Addendum III provides my perspectives on the Act as recently shared with the NCCUSL. As you are aware, 2005 Wisconsin Act 96 addresses the issue of liability and workers compensation by designating state agency employment status to specific emergency response and health care providers volunteering services during a declared emergency. The UEVHCPA would be very

Honorable Ballweg
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helpful in insuring uniformity across state boundaries and promoting cross border assistance from out-of-state health care volunteers. However, toward that end it is essential that the NCCUSL resolve the sections dealing with Civil Liability and Workers' Compensation as soon as possible.

Regional Boundaries and Emergency Planning Committees: Lastly, you request information on the boundaries for emergency management, public health, hospital and others. You also ask for perspective on the desirability of making the various regions more uniform. Addendum IV, V, VI and VII are maps of the Department of Health and Family Service Regions, the Hospital Planning Regions, the Public Health Preparedness Consortia and the Wisconsin Emergency Management Regions respectively.

Although I cannot speak for Wisconsin Emergency Management, the DHFS regional structure has been static over many years and represents a regional structure which facilitates the delivery of the entire spectrum of the department's health and human services to the residents of Wisconsin. When federal funding for Public Health and Hospital Preparedness increased dramatically in 2001, Wisconsin recognized the need for regional plans, exercises and response to "bioterrorism, infectious disease outbreaks and other public health threats and emergencies" (the language in the federal cooperative agreement). It was also apparent that to be fully engaged and successful our local partners needed to be comfortable with their regional partners. After discussions with local health departments and hospitals, it became clear that no one regional structure would work for both initially – hence the disparate boundaries for the Public Health Preparedness Consortia and Hospital Planning Regions. But it was our hope that eventually at least these two disparate regional structures could be melded.

In 2004 Secretary Helene Nelson directed the Division of Public Health to engage our local health department partners in a review of their Public Health Preparedness consortia structure with the intent of identifying administrative efficiencies to accommodate the anticipated reduction in available federal funds. That effort concluded in a report issued in January, 2005, which recommended that any reductions in available funds be absorbed within the established consortia structure rather than consolidate any consortia.

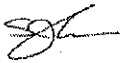
However, in April of this past year the Division of Public Health requested our local public health department partners to again evaluate the public health consortia structure because of significant reductions in federal funding. That process is currently underway. Representatives of local health departments, consortia and the Division of Public Health are developing and examining the effects of various options and this process is expected to be completed in March. To take advantage of this review, we recommend that any action to change the boundaries of the various regional structures that are currently used for public health and hospital preparedness wait until this process is completed.

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The Wisconsin's Public Health Council Committee on Emergency Preparedness perspective on the issue of disparate regional planning boundaries is that emergency responders may retain their individual regional structures for their own planning purposes, however the Wisconsin Emergency Management regions be used to coordinate and integrate response plans across organizations.

I hope this information is helpful to the important work of your committee. I would be happy to have staff knowledgeable on these issues attend your January 10 meeting if that would be helpful. If you need additional information, please do not hesitate to contact me at (414) 227-4997.

Sincerely,



Sheri L. Johnson, Ph.D.
Administrator and State Health Officer

Attachments

cc: Patrick Cooper, DHFS
Dr. Ayaz M. Samadani, Chair, Public Health Council
Mr. Bevan Baker, Chair, Public Health Council EPC

Addendum I: Wisconsin Statutes on Isolation and Quarantine

250.02 State health officials.

(1)State health officer; duties. The secretary shall appoint a state health officer and may assign the state health officer such duties of the secretary or department as the secretary provides. The state health officer may appoint such advisory and examining bodies as are needed to carry out the duties of the state health officer and as provided by law. The state health officer shall appoint state epidemiologists for program areas of acute and communicable diseases, occupational and environmental diseases, maternal and child health and chronic diseases. Individuals appointed as state epidemiologists shall have advanced training and expertise in epidemiology in their program areas.

(2)Chief medical officers; qualifications; duties. The state health officer shall appoint chief medical officers in the classified service to provide public health consultation to, and leadership for, state health programs. The chief medical officers shall also serve as state epidemiologists under sub. (1), for acute and communicable diseases, occupational and environmental diseases, maternal and child health and chronic diseases. The chief medical officers shall be physicians who have training and expertise, as prescribed by the department, appropriate to their areas of assignment. The chief medical officers shall have all of the powers and duties that are designated to them by the state health officer to enforce the health laws of the state and to advise state and local officials as to health promotion, disease prevention and public health intervention strategies necessary to prevent morbidity and unnecessary mortality.

252.03 Duties of local health officers

252.03(1)

(1) Every local health officer, upon the appearance of any communicable disease in his or her territory, shall immediately investigate all the circumstances and make a full report to the appropriate governing body and also to the department. The local health officer shall promptly take all measures necessary to prevent, suppress and control communicable diseases, and shall report to the appropriate governing body the progress of the communicable diseases and the measures used against them, as needed to keep the appropriate governing body fully informed, or at such intervals as the secretary may direct. The local health officer may inspect schools and other public buildings within his or her jurisdiction as needed to determine whether the buildings are kept in a sanitary condition.

252.03(2)

(2) Local health officers may do what is reasonable and necessary for the prevention and

suppression of disease; may forbid public gatherings when deemed necessary to control outbreaks or epidemics and shall advise the department of measures taken.

252.06 Isolation and quarantine

252.06(1) The department or the local health officer acting on behalf of the department may require isolation of a patient or of an individual under s. 252.041 (1) (b), quarantine of contacts, concurrent and terminal disinfection, or modified forms of these procedures as may be necessary and as are determined by the department by rule.

252.06(3) If a local health officer suspects or is informed of the existence of any communicable disease, the officer shall at once investigate and make or cause such examinations to be made as are necessary. The diagnostic report of a physician, the notification or confirmatory report of a parent or caretaker of the patient, or a reasonable belief in the existence of a communicable disease shall require the local health officer immediately to quarantine, isolate, require restrictions or take other communicable disease control measures in the manner, upon the persons and for the time specified in rules promulgated by the department. If the local health officer is not a physician, he or she shall consult a physician as speedily as possible where there is reasonable doubt or disagreement in diagnosis and where advice is needed. The local health officer shall investigate evasion of the laws and rules concerning communicable disease and shall act to protect the public.

252.06(4)(a) If deemed necessary by the department or a local health officer for a particular communicable disease, all persons except the local health officer, his or her representative, attending physicians and nurses, members of the clergy, the members of the immediate family and any other person having a special written permit from the local health officer are forbidden to be in direct contact with the patient.

252.06(4)(b) If s. 250.042 (1) applies, all of the following apply:

252.06(4)(b) 1 No person, other than a person authorized by the public health authority or agent of the public health authority, may enter an isolation or quarantine premises.

252.06(4)(b)2 A violation of subd. 1. is subject to a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

252.06(4)(b) 3 Any person, whether authorized under subd. 1. or not, who enters an isolation or quarantine premises may be subject to isolation or quarantine under this section.

252.06(5) The local health officer shall employ as many persons as are necessary to execute his or her orders and properly guard any place if quarantine or other restrictions on communicable disease are violated or intent to violate is manifested. These persons shall be sworn in as quarantine guards, shall have police powers, and may use all necessary means to enforce the state laws for the prevention and control of communicable diseases, or the orders and rules of the department or any local health officer.

252.06(6)(a) When the local health officer deems it necessary that a person be quarantined or otherwise restricted in a separate place, the officer shall remove the person, if it can be done without danger to the person's health, to this place.

252.06(6)(b) When a person confined in a jail, state prison, mental health institute or other public place of detention has a disease which the local health officer or the director of health at the institution deems dangerous to the health of other residents or the neighborhood, the local health officer or the director of health at the institution shall order in writing the removal of the person to a hospital or other place of safety, there to be provided for and securely kept. Upon recovery the person shall be returned; and if the person was committed by a court or under process the removal order or a copy shall be returned by the local health officer to the committing court officer.

252.06(10)(a) Expenses for necessary medical care, food and other articles needed for the care of the infected person shall be charged against the person or whoever is liable for the person's support.

252.06(10)(b) The county or municipality in which a person with a communicable disease resides is liable for the following costs accruing under this section, unless the costs are payable through 3rd-party liability or through any benefit system:

252.06(10)(b) 1 The expense of employing guards under sub. (5).

252.06(10)(b) 2 The expense of maintaining quarantine and enforcing isolation of the quarantined area.

252.06(10)(b) 3 The expense of conducting examinations and tests for disease carriers made under the direction of the local health officer.

252.06(10)(b) 4 The expense of care provided under par. (a) to any dependent person, as defined in s. 49.01

Addendum II

Uniform Emergency Volunteer Healthcare Practitioners Act (UEVHPA)

The Drafting Committee on UEVHPA, appointed by and represented by the National Conference on Commissioners on Uniform State Laws, addressed the important issue of registering and deploying healthcare volunteers during emergencies. The overall goal of the Act is to maximize the pool of skilled volunteer healthcare practitioners (VHPs) who have registered with a volunteer registration system in advance of an event. UEVHPA provides uniform legislative language to facilitate response efforts related to the following:

Key Points:

- **Section 3: Conditions applicable to providing healthcare or veterinary services;** during a state of emergency, designated *agency* may regulate duration of practice of VHPs, geographical area of practice, classes of practitioners who may practice, and any other matters to effectively coordinate the provision of healthcare or veterinary services.
- **Section 4: Volunteer healthcare practitioner registration systems;** systems in place prior to an emergency, information accessible by authorized personnel, verification of licensure and good standing, only applies to VHPs registered in designated systems such as an ESAR-VHP system (Wisconsin Emergency Assistance Volunteer Registry- WEAVR is Wisconsin's ESAR-VHP system), Medical Reserve Corps, or another system designated by the *agency*.
- **Section 5: Interstate licensure recognition for volunteer healthcare practitioners;** VHPs with license and in good standing from other states may practice in this state, a healthcare entity may waive or modify credentialing or privileging standards while an emergency is in effect.
- **Section 6: Provision of volunteer healthcare or veterinary services; Administrative sanctions;** VHPs must adhere to their scope of practice, the *agency* and/or a host entity may modify or restrict services that VHPs may provide, guidelines for administrative sanctions.
- **Section 7: Effect of compensation on volunteer status;** monetary or other compensation to a VHP for the provision of services during an emergency does not preclude the practitioner from being a VHP. Exceptions to preexisting employment relationships and non state resident VHPs employed by disaster relief organizations

- **Section 8: Relation to other laws;** does not limit rights, privileges or immunities provided to VHPs by other laws; the *agency* may incorporate into state forces, pursuant to EMAC, a VHP who is not an employee of the state.
- **Section 9: Regulatory authority;** authorization of *agency* to promulgate regulations and implement provisions for UEVHPA, and shall consult with entity that coordinates EMAC in this state (Wisconsin Emergency Management).
- **Sections 10 and 11: Civil liability and workers compensation;** Final action deferred until the 2007 annual meeting of the National Conference of Commissioners on Uniform State Laws. In the meantime, states should carefully review their existing laws, laws of other states, and EMAC provisions.
- **Section 12: Uniformity of application and construction;** consideration must be given to the need to promote uniformity of the law with respect to its subject matter.
- **Section 13: Severability;** provisions are severable

Agency = The authorized agency or organization designated by the state legislation that is responsible for that state's UEVHPA.



DIVISION OF PUBLIC HEALTH

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August 15, 2006

Raymond P. Pepe
National Conference of Commissioners on Uniform State Laws (NCCUSL)
Uniform Emergency Volunteer Healthcare Practitioners Act (UEVHPA)
NCCUSL/UEVHPA Drafting Committee
17 N. Second Street, 18th Floor
Harrisburg, Pennsylvania 17101-1507

Dear Mr. Pepe:

The Wisconsin Department of Health and Family Services, Division of Public Health (DHFS/DPH) imparts thanks to you and the members of the NCCUSL/UEVHPA Drafting Committee for addressing the uniformity of state systems designed to register, recognize and deploy volunteer healthcare practitioners during emergencies. Wisconsin's public health and hospital preparedness leaders consider the issues addressed in the UEVHPA key to the success of overall community and state readiness and response.

Wisconsin was the first state to have a secure, electronic registration system for volunteer healthcare professionals in place following the initial Emergency System for Advance Registration of Volunteer Health Professionals (ESAR VHP) guidance provided by HRSA. Our state system, the Wisconsin Emergency Assistance Volunteer Registry (WEAVR) has been accepting self-registration of health care professionals since November 2003. Wisconsin's preparedness leaders are highly visible and involved in national efforts to advocate further guidance, direction, and implementation of state registration systems. The UEVHPA provides a partial response to states' requests that have surfaced in ESAR VHP Workgroups over the past two years regarding federal leadership needed in order to implement successful volunteer healthcare practitioner programs.

My review of the current draft of the UEVHPA concludes general agreement with and support for the overarching goals of Sections 1-9, 12, and 13. In particular, the recognition and support for the following:

- Section 4: Volunteer Healthcare Practitioner Registration Systems, (b)1; ESAR VHP and Medical Reserve Corps
- Section 5: Interstate Licensure Recognition for Volunteer Healthcare Practitioners
- Section 3: Conditions Applicable to Providing Healthcare or Veterinary Services, (c) 1; the encouragement and necessity for continued and improved interagency consultation and coordination.

Raymond P. Pepe
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August 15, 2006

I would like the Drafting Committee to consider an expansion of or additional language in Section 3(c)1 to emphasize, not only the need for consultation and coordination between a host entity and appropriate agencies during emergency events, but also consultation in advance of emergencies. Advance consultation may well improve the efficiency and success of emergency planning efforts and exercise events that involve healthcare practitioner volunteers.

My Division appreciates the reservation placed on Section 10, Civil Liability, and Section 11, Workers' Compensation, in order that the Drafting Committee has sufficient time to address these issues. In the context of all ESAR VHP issues that states have indicated the need for federal guidance, these two issues have been outstanding. Additionally, it is wise for the Drafting Committee to advise states to review their individual existing laws prior to the adoption of a state UEVHPA. This is especially true if state adoption is being considered prior to final action by the NCCUSL in 2007. However, I would like to stress that a sound resolution of the Civil Liability and Workers' Compensation Sections by NCCUSL is imperative in 2007 and I will welcome the opportunity to provide input. Should the committee wish to request input from Wisconsin Division of Public Health, please do not hesitate to contact me at (608) 267-7828.

Sincerely,

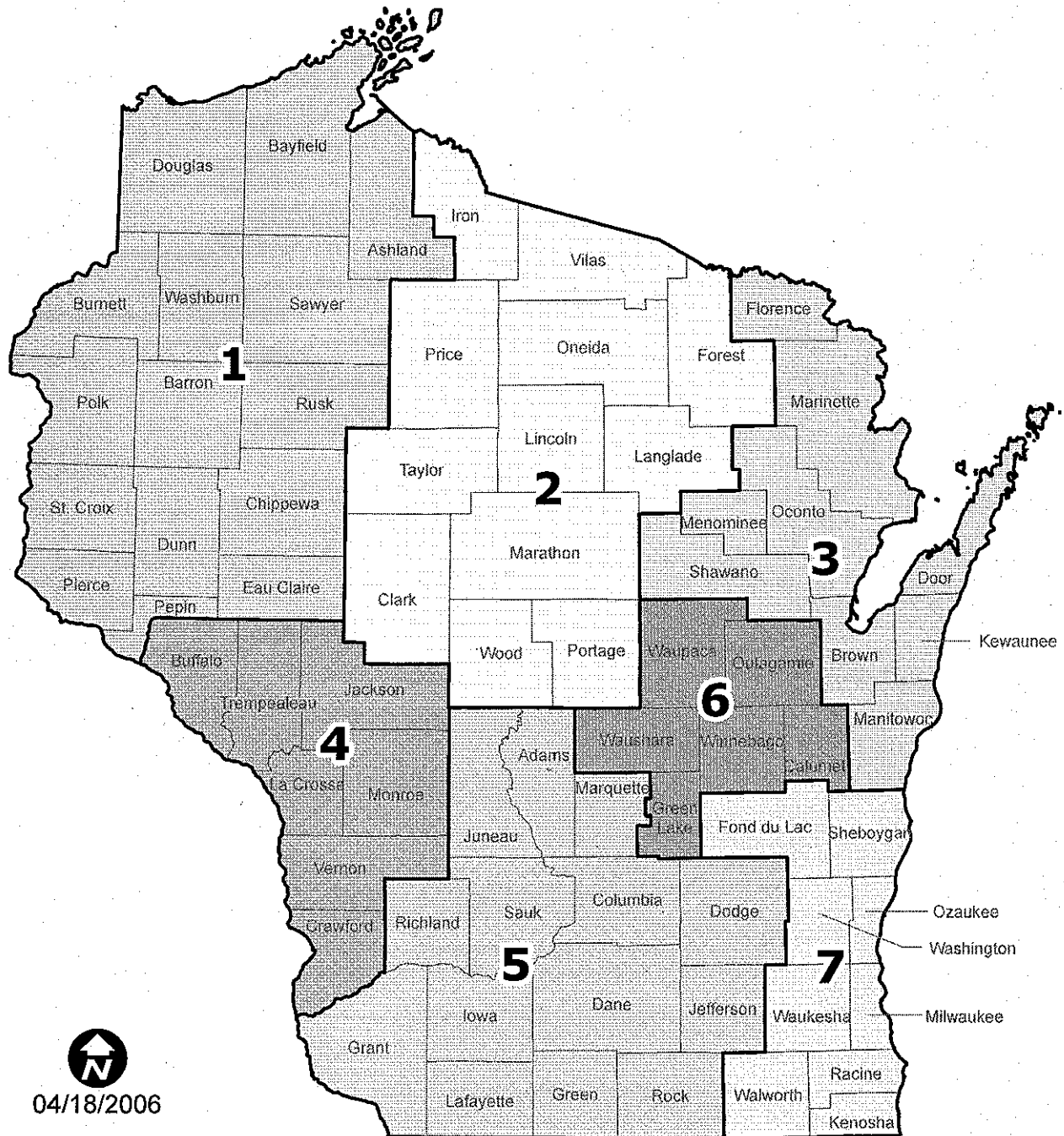
Sheri Johnson, Ph.D.
Administrator and State Health Officer

C: Patricia Elliott, Association of State and Territorial Health Officers

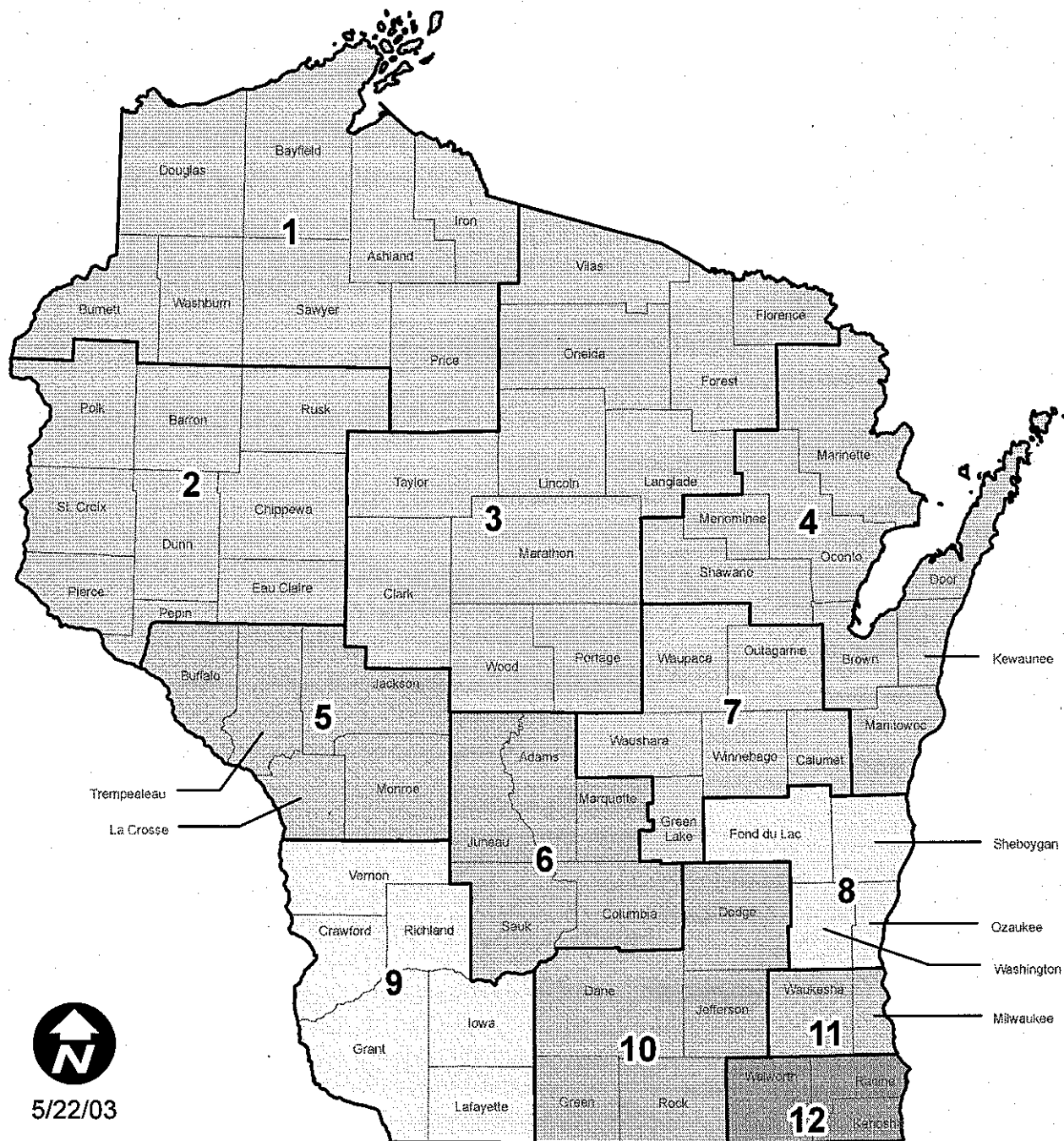
DHFS Regions



HRSA Hospital Preparedness Regions



Public Health Consortia



Emergency Management Regions



#4

Shannon, Pam

From: Prorise, Richard L - DNR
Sent: Wednesday, January 03, 2007 8:30 AM
To: Shannon, Pam
Cc: Smith, Amber M - DNR; Schlaefer, Mary W - DNR
Subject: Public Health Emergencies

You have asked DNR whether we have any authority for bypassing EIS requirements when necessary to protect public health and safety. Our WEPA rule, chapter NR 150, provides such authority. Section NR 150.03 specifies that an action type list shall be used to determine the category of a proposed action and the minimum procedural requirements associated with such an action. Section NR 150.03 (4) (c) specifies that type IV actions include "Emergency activities to protect public health, safety, the human environment".

Section NR 150.20 (1) (a) specifies that, with a limited exception provided in section NR 150.20 (2) (b), "type IV actions do not require the EA or EIS process, do not require a news release, and are otherwise exempt from the procedural requirements of this chapter."

From: Schmidt, Robin R - DATCP
Sent: Friday, January 05, 2007 3:17 PM
To: Shannon, Pam
Cc: Sweet, Richard; Moll, Keeley A - DATCP; Williams, Vincent
Subject: Emergency preparedness Committee

Pam - This is in response to an email you sent to Keeley Moll at DATCP regarding DATCP's input on a proposal to waive the requirements of the Environmental Impact Statement process during an emergency.

In general, our agency supports measures to streamline actions that have to be taken during an emergency, however, we are not the technical experts on whether it would be appropriate to waive all of the environmental impact statement requirements. For example, during drought emergencies, the governor has waived the public hearing part of the process for allowing DNR to issue irrigation permits from surface water, while keeping the technical requirements for protecting the aquatic environment. This has been a great help to some of the farmers who may be able to use surface waters for irrigation purposes but still protects the environment.

For many agriculture emergencies, the most critical issue we will have relates to carcass disposal and the need to quickly dispose of potentially large quantities of carcasses (diseased as well as non-diseased). To that end, we are also requesting a change to the statute as it relates to carcass disposal. A draft of this statutory change is included for your information/support/inclusion in any recommendations put forward by your committee (see the attached email). As you can see from that email, there may still be some discussions that need to be held regarding carcass disposal, but this is likely our number one issue from a disease management/ag emergency issue.

<<Disposal of Animal Carcasses>>

If you have any questions, please don't hesitate to contact me or Keeley.

Thanks!

Robin Schmidt, Agency Liaison
Food and Agriculture Security
Office of Secretary
WI Dept of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive
Madison, WI 53708

phone: (608) 224-5009
fax (608) 224-5034

Transportation and Disposal of Animal Carcasses

DATCP Draft Legislation

- 1 **AN ACT to repeal and recreate** s. 95.50 of the statutes; **relating to:** transportation and
- 2 disposal of animal carcasses.

Analysis

This bill changes and clarifies current law related to transportation and disposal of animal carcasses. Currently, under s. 95.50, Stats., a person is prohibited from doing any of the following:

- Disposing of “animal” carcasses in water bodies, on public highways, or in any “other place.”
- Leaving animal carcasses exposed to dogs or wild animals for more than 24 hours in the months of April to November, or 48 hours in the months of December to March.
- Transporting, on any public highway, the carcass of an animal suspected of having died from anthrax, blackleg, foot and mouth disease, sleeping sickness, glanders, or any other “highly dangerous” disease designated by the department of agriculture, trade and consumer protection (“DATCP”). Currently, all such carcasses must be burned or buried at least 6 ft. under ground. If it is necessary to transport a carcass across a public highway for burial, it must be transported in a manner that does not contaminate the public highway.

Section 95.50, Stats., currently authorizes DATCP to regulate the disposal of animals that die of diseases other than anthrax, blackleg, foot and mouth disease, sleeping sickness and glanders. Currently, under s. 95.50, Stats., local health departments or counties must dispose animal carcasses found on public highways or other public places if the animal owner cannot be found.

This bill repeals and recreates s. 95.50, Stats. Section 95.50, as recreated by this bill, applies to livestock and other domestic animal carcasses (not wild animal carcasses). Under this bill, a “diseased carcass” means the carcass of a livestock animal or other domestic animal that was any of the following at the time of death:

- Infected with a contagious or infectious disease.

- Potentially infected with a contagious or infectious disease, based on known exposure to a contagious or infectious disease.
- Reasonably suspected of being infected with a contagious or infectious disease, based on disease symptoms or testing.

Under this bill, no person may do any of the following, either directly or through an employee or agent:

- Transport or dispose of a carcass, which the person knows or should reasonably know to be a diseased carcass, in a manner that creates a significant and foreseeable risk of disease transmission to humans or other animals.
- Transport or dispose of a carcass in violation s. 95.72, Stats., or in violation of a lawful DATCP rule or order.
- Dispose of any carcass in waters of the state (this does not prohibit the use of farm-raised fish as bait).
- Dispose of a carcass on another person's property or on public property without the property owner's permission, except as provided in a DATCP order or state emergency management order.

Under this bill, no person who owns or controls a carcass or the land on which a carcass is located may knowingly leave that carcass exposed to access by dogs or wild animals for more than 24 hours in the months of April to November, or more than 48 hours during the months of December to March. This provision applies to any person, including a local government, that owns or controls a carcass or the land on which a carcass is located.

Under this bill, DATCP may by rule or order regulate the transportation and disposal of carcasses for the purpose of preventing and controlling contagious and infectious diseases. This bill repeals the current *requirement* for local health departments to dispose of carcasses found on public roads or other public property, but does not prohibit them from doing so.

This bill does not change a county's current authority, under s. 59.54(21), Stats., to dispose of carcasses found on public roads or other public property. This bill does not change DATCP's current authority, under s. 95.72, Stats., to regulate the transportation and processing of dead animals by rendering plants, animal food processors, dead animal collectors and others.

1 **SECTION 1.** 95.50 of the statutes is repealed and recreated to read:

1 **95.50 Transportation and disposal of animal carcasses. (1) DEFINITIONS.** In
2 this section:

3 (a) "Carcass" means the dead body, or any part of the dead body, of a livestock
4 animal or other domestic animal.

5 (b) "Contagious" means spread by contact, body secretions or fomites.

6 (c) "Diseased carcass" means the carcass of a livestock animal or other domestic
7 animal that was any of the following at the time of death:

8 1. Infected with a contagious or infectious disease.

9 2. Potentially infected with a contagious or infectious disease, based on known
10 exposure to a contagious or infectious disease.

11 3. Reasonably suspected of being infected with a contagious or infectious
12 disease, based on disease symptoms or testing.

13 (d) "Fomite" means an inanimate object or substance that transfers infectious
14 organisms from one animal to another.

15 (e) "Infectious" means caused by a pathogenic agent.

16 (f) "Person" means an individual, corporation, partnership, cooperative, limited
17 liability company, trust or other legal entity.

18 **(2) CARCASS TRANSPORTATION AND DISPOSAL; PROHIBITIONS.** No person may do
19 any of the following, either directly or through an employee or agent:

20 (a) Transport or dispose of a carcass, which the person knows or should
21 reasonably know to be a diseased carcass, in a manner that creates a significant and
22 foreseeable risk of disease transmission to humans or other animals.

1 (b) Transport or dispose of a carcass in violation s. 95.72, Stats., or in violation of
2 a lawful rule or order of the department.

3 (c) Dispose of any carcass in waters of the state. This paragraph does not
4 prohibit the use of farm-raised fish as bait.

5 (d) Dispose of a carcass on another person's property or on public property
6 without the property owner's permission, except as provided in a department order or
7 state emergency management order.

8 **(3) TIMELY DISPOSITION OF CARCASSES.** No person who owns or controls a
9 carcass, or who owns or controls the land on which that carcass is located, may
10 knowingly leave that carcass exposed to access by dogs or wild animals for more than 24
11 hours in the months of April to November, or more than 48 hours during the months of
12 December to March. A person knowingly leaves a carcass exposed if that person knows
13 or should reasonably know that the carcass is exposed.

14 **(4) CARCASS TRANSPORTATION AND DISPOSAL; REGULATION.** The department
15 may, by rule or order, regulate the transportation and disposal of carcasses for the
16 purpose of preventing and controlling contagious and infectious diseases.

(END)

Karls, Jessica

From: Williams, Vincent
Sent: Tuesday, December 26, 2006 8:42 AM
To: Sweet, Richard; Shannon, Pam; Karls, Jessica
Subject: FW: December 22nd Memo

—Original Message—

From: CSklar@co.sauk.wi.us [mailto:CSklar@co.sauk.wi.us]
Sent: Friday, December 22, 2006 2:17 PM
To: Rep.Ballweg
Cc: Reed, Larry - DMA; tstieve@co.sauk.wi.us; CEngelhardt@co.sauk.wi.us
Subject: December 22nd Memo

I have been with Sauk County Emergency Management for 17 years. In those 17 years we have had many disasters, including six that were declared presidential disasters. Our Emergency Operations Plan, which is in conjunction with the State Emergency Operations Plan, spells out how this agency will coordinate with all agencies, both private and governmental.

While Sauk County uses Salvation Army as their agency of choice, we are also forming a Volunteer Organizations Active In Disasters (VOAD) Chapter in Sauk County which includes Salvation Army, Red Cross, and other private agencies who have the ability to assist our county residents during any type of incident. Sauk County is not unique, this is and has been the policy of all Emergency Management Directors for as long as I have worked with this agency and many years before that. I strongly urge you to invite a County Director, or someone from the Wisconsin Emergency Management Agency to sit on your committee to assist you in understanding what is already in place. Wisconsin has been one of the most pro active states under the guidance of Wisconsin Emergency Management.

Thank you for the opportunity to respond to your memo.

Corene Ederer-Sklar, Emergency Management Director Sauk County EMBS 510 Broadway Baraboo WI 53913 (608)355-4410
Fax: (608)355-3299
csklar@co.sauk.wi.us

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Karls, Jessica

From: Shannon, Pam
Sent: Wednesday, December 27, 2006 8:28 AM
To: Ballweg, Joan; Williams, Vincent
Cc: Karls, Jessica; Sweet, Richard
Subject: FW: Disaster Preparedness Committee - Memo

FYI

Pam Shannon

From: Nelson, Teri L - DMA
Sent: Wednesday, December 27, 2006 7:49 AM
To: Shannon, Pam
Subject: FW: Disaster Preparedness Committee - Memo

Hi Pam-

I received this message from a county director asking me to forward this. Can you please make sure it gets to the proper person?

Thanks

Teri Nelson

-----Original Message-----

From: Nancy Crowley [mailto:nhcrowley@sbcglobal.net]
Sent: Tuesday, December 26, 2006 6:58 PM
To: Nelson, Teri (DMA)
Cc: Bob Ziegelbauer
Subject: Re: Disaster Preparedness Committee - Memo

Please forward my reply to the Representative.
Nancy Crowley
Manitowoc County EM

Representative:

Manitowoc County has had a strong emergency management program for the past 25 years. We have experienced our share of natural and technological disasters. In all instances the private sector as well as the organizations you have listed and many others have been ready and willing to work with us to return the community to a state of recovery.

Nancy H. Crowley, Director
Manitowoc County Emergency Management

1/8/2007

"Nelson, Teri (DMA)" <teri.nelson@dma.state.wi.us> wrote:

Hello-

I am forwarding a memo from the Chair of the Special Committee on Disaster Preparedness Planning. Please let me know if you have any problems opening it or receiving it.

Thanks

Teri Nelson

Wisconsin Emergency Management

teri.nelson@dma.state.wi.us

<<22directors_dplan.pdf>>

Karls, Jessica

From: Williams, Vincent
Sent: Thursday, December 21, 2006 1:43 PM
To: Ballweg, Joan; Karls, Jessica; Sweet, Richard; Shannon, Pam
Subject: FW: Disaster Preparedness Recommendations

Rep. Kerkman received this feedback from some of her County Emergency Management people and wanted to share it with the committee.

—Original Message—

From: Maack, David [mailto:David.Maack@goRacine.org]
Sent: Wednesday, December 20, 2006 3:31 PM
To: Kerkman, Samantha
Subject: RE: Disaster Preparedness Recommendations

Samantha-

I had a few comments based on a cursory review:

D.1. There may be some resistance to expanding MABAS to LE. We may need baby steps. The committee should look at a program used by LE in Milwaukee/Waukesha called SMART.

D.5. What would be the scope of a regional planning committee. Who would be on it? What authority would they have? Home rule is still an important piece and all disasters are local first. There are regional planning initiatives taking place now. I am not sure if it needs to be legislated.

D.10. I believe that we have the ability now to declare an emergency. I would need further clarification.

D.12. I believe that this is too broad.

As I digest I may have further comments. Thanks for asking us for input.

David L. Maack, CEM, CPM
Racine County Emergency Management
262.636.3515
e-mail: david.maack@goRacine.org
www.racineco.com/emergencymanagement
"Building a Disaster Resistant Community-Making Disaster Resistance a Way of Life"

—Original Message—

From: Rep.Kerkman [mailto:Rep.Kerkman@legis.wisconsin.gov]
Sent: Wednesday, December 20, 2006 3:08 PM
To: Maack, David; bschliesman@co.kenosha.wi.us
Subject: Disaster Preparedness Recommendations

Ben and David,

Attached please find a copy of the potential recommendations from the Special Committee on Disaster Preparedness. I would be curious as to your thoughts and whether you have any suggestions related to them.

Thanks so much.

State Representative Samantha Kerkman
66th Assembly District
103 West State Capitol
Madison, WI 53708
(608) 266-2530
1-888-534-0066
rep.kerkman@legis.wisconsin.gov

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Thank you.

The County of Racine does not endorse any opinions, conclusions or other information contained within this email and any attachments that does not pertain to official business.

Shannon, Pam

From: Williams, Vincent
Sent: Thursday, December 28, 2006 2:35 PM
To: Shannon, Pam; Sweet, Richard; Karls, Jessica
Subject: FW: Working with Red Cross and volunteer organizations

From: Zelhofer, Tony [mailto:Tony.Zelhofer@fdlco.wi.gov]
Sent: Thursday, December 28, 2006 1:56 PM
To: Rep.Ballweg
Cc: DeClute, Aaron
Subject: Working with Red Cross and volunteer organizations

Representative Ballweg,

Fond du Lac County has an excellent relationship with the Red Cross and has been working closely together for some time now. We are fortunate to have other volunteer organizations that we are proud to work with. They are an invaluable resource for helping us to develop our plans for the Special Needs Population such as in the case of an evacuation. The energy and enthusiasm that these groups bring to the table is incredible.

Tony L. Zelhofer
Assistant Director of Communications/Emergency Management

Issues on question of RNs signing death records

A. Could a temporary authorization system adversely affect the decedents' families? Yes. Persons with insurance policies will need industry-accepted cause of death certifications. If an insurance carrier questions the certifier's legality, it could cause delays in processing the claims and receipt of benefits. That would be a financial burden to the decedent's family. Since there are hundreds of out of state insurance carriers, it would be impossible to notify them of the temporary authorization of RNs to sign death records.

B. Could an "expedited" cause of death certification cause other problems? Yes. Nurses are not experienced in completing these documents and will require training that will not be available in this type of situation. As a result, there could be significant changes in cause of death certification practices. These changes may skew mortality data during this critical reporting period. This is a legal problem, since insurance coverage could be affected. It is also a public health data problem since it could affect the data used to analyze pre-existing risk factors that may cause higher mortality rates from the flu (the death record collects contributing causes along with the underlying cause of death).

C. Will causes of death be disputed more often with RN certifications? Probably. We already have many cases of families who dispute causes of death reported on death records. Many of these cases result in prolonged arguments between families, insurance companies and medical certifiers. Some even end up in court. It is quite probable that families will be more likely to dispute an RN's certification than an MD's.

D. Will nurses really have more time to complete death records during a pandemic? Probably not. Time a nurse spends doing paper work is time away from direct patient care and other necessary tasks involved with handling a pandemic patient over-load situation.

E. Are existing vital records laws flexible enough to accommodate changes to death record completion processes during a pandemic? Yes. The present system will allow for variations in the processing of the death records during a pandemic situation. That flexibility will be enhanced when death registration is automated (scheduled to be implemented within two years).

Under the current paper system the following process variations can be implemented to ease the paper-work burden for cause of death certification without adversely affecting families and the mortality data collected:

1. We can lift the restriction on use of signature stamps for physicians. The listed physician will still be legally responsible for the cause of death certification, but signature stamp will allow other staff to actually fill in the paper document per the physician's orders.
2. Medical certifiers can file "pending" cause of death records that can be completed later when the physician has access to additional medical data on the patient. Families may purchase copies of "pending" death records that can be used for most of their legal/financial transactions.
3. Coroners and M.E.s may be completing more of the cause of death certifications. Coroners and M.E.s will be involved with increased numbers of home deaths not under hospice and in some cases. In order to expedite cremation permits, they will be asked to complete the medical certification for death records of some in-patient deaths (currently

30% cremation rate and that is expected to be much higher during a pandemic where funeral visitations may be limited or even prohibited).

4. Our office does not require the cause of death from the patient's attending physician. The facility can designate a physician to perform that task.

Under the electronic registration system scheduled to be implemented within the next two years, the following process variations will allow for expediting death record completion and registration:

1. Fact of death legal data will be filed separately from cause of death information. This will allow the family to have certified copies of death records for use in legal/financial transactions before the cause of death is completed.
2. The cause of death will be collected either in electronic format or on a worksheet. Both processes will allow faster completion of the document.
3. Pending cause of death certification will be acceptable until the cause of death can be accurately determined from the medical documentation.

Sweet, Richard

From: Sweet, Richard
Sent: Friday, December 22, 2006 3:43 PM
To: 'Vicki Bier'; Ballweg, Joan
Cc: Williams, Vincent; Shannon, Pam; Karls, Jessica
Subject: Ex parte proceedings

Vicki,

Just following up on your recommendation to allow certain administrative and civil proceedings to be held without all parties present in the case of, for example, a pandemic.

I did a statutory search on terms like "ex parte" and "in absentia" in the statutes and didn't find anything that could be used for a situation like this. Someone at the meeting mentioned ch. 55, which covers protective placement and protective services hearings. I've pasted in s. 55.10(2), Stats. below. However, that statute only applies when a guardian ad litem waives attendance.

One thing you might want to consider is having the Committee direct a letter to the Chief Justice of the Wisconsin Supreme Court (cc to the Director of State Courts) asking that the court system address this in its continuity of operations plan, and get back to us on any statutes they feel would need to be amended to allow this. A similar letter could be sent to DOA with respect to administrative hearings held by administrative law judges (ALJs) in the various state agencies.

I'll be out of the office until Jan. 8, but you can call me on Jan. 8 or 9 if you want to discuss this further. Or feel free to respond by e-mail.

Enjoy the holidays.

Dick Sweet

Richard Sweet
Senior Staff Attorney
Wisconsin Legislative Council
(608)266-2982
richard.sweet@legis.wisconsin.gov

55.10 (2) Attendance. The petitioner shall ensure that the individual sought to be protected attends the hearing on the petition unless, after a personal interview, the guardian ad litem waives the attendance and so certifies in writing to the court the specific reasons why the individual is unable to attend. In determining whether to waive attendance by the individual, the guardian ad litem shall consider the ability of the individual to understand and meaningfully participate, the effect of the individual's attendance on his or her physical or psychological health in relation to the importance of the proceeding, and the individual's expressed desires. If the individual is unable to attend a hearing only because of residency in a nursing home or other facility, physical inaccessibility, or lack of transportation, the court shall, if requested by the individual, the individual's guardian ad litem, the individual's counsel, or other interested person, hold the hearing in a place where the individual is able to attend.



STATE OF WISCONSIN \ DEPARTMENT OF MILITARY AFFAIRS
WISCONSIN EMERGENCY MANAGEMENT

2400 WRIGHT STREET #9
P.O. BOX 7865
MADISON, WISCONSIN 53708-7865
Telephone (608) 242-3232
Facsimile (608) 242-3247
24-Hour Emergency Hotline: 1-800-943-0003
<http://emergencymanagement.wi.us>

January 5, 2007

Representative Joan Ballweg
Chair, Special Committee on Disaster Preparedness Planning
1 East Main St., Suite 401
Madison, WI 53701

Dear Representative Ballweg,

I would like to take this opportunity to provide my written response to your December 26th letter on several recommendations and issues that have been brought forward by the Joint Legislative Council's Special Committee on Disaster Preparedness Planning. I would also like to offer two additional suggestions for committee consideration relating to opportunities for additional legislative consideration.

WEM Regional Office Support:

Wisconsin Emergency Management (WEM) embraces the recommendation for closer ties to various regional entities involved in emergency management activities through the regional offices. The six WEM Regional Directors currently serve on the board of directors for the seven HRSA regions and attend meetings as schedules allow. The Regional directors also attend the 11 Bio-Terrorism Consortia meetings in addition to assignments with regional port and maritime security, pandemic planning and response groups, agro-terrorism and regional catastrophic planning and evacuation teams. These are just a few examples of the institutionalized interaction currently underway. In addition, representatives from both the HRSA and bio-terrorism consortia are invited to WEM regional meetings to interact with the County Emergency Managers. Please be assured of our continued support for these levels of interaction in the future. WEM has also requested, through the upcoming budget process, additional position authority to expand regional staffing to support the growing number of regional planning and network opportunities.

Uniformity of Regions:

A great deal of discussion has taken place over the last twenty-four months regarding the formal establishment of regions within Wisconsin as it relates to our ability to respond to catastrophic events. A summary of those discussions follows;

- Chapter 166 of the Wisconsin Statutes calls for the establishment of Wisconsin Emergency Management regions or "emergency management areas". There are six emergency management regions that were established based on population density and area. Each region has an appointed Regional Director employed by Wisconsin Emergency Management.
- An informal count of agencies/organizations that traditionally have an emergency response role i.e., DNR, Level A HAZMAT teams, the Wisconsin State Patrol, Hospital Resource Service Administration, etc., indicates that there are as many as twenty-seven distinct regional or district boundaries.
- All guidance published by the Department of Homeland Security i.e. the National Response Plan, the National Preparedness Guidance, the Nationwide Plan Review, etc, directs the "regional" perspective in preparedness planning. As we approach the competitive process in applying for FY07 HLS funds, we know that our success is dependent on the effectiveness of our regional preparedness efforts.
- It is commonly understood that federal, state and local funding could never be sufficient to provide the resources to each and every local jurisdiction to respond to catastrophic events. The consistent theme is to identify/ensure that sufficient regional capabilities exist to prepare for and respond to catastrophic events anywhere in the State.
- As a logical starting point in the preparedness process, in December of 2005 the Wisconsin Homeland Security Council identified the established WEM regions as the basis for evaluating and enhancing capabilities. This has guided on-going initiatives to include the development of Specialty Tasks Forces, mass evacuation planning, interoperable communications, outreach to the private sector and regional exercises.

In conclusion, while we felt that it was important to formally establish regions to effectively evaluate and influence response capabilities, we do not see added value in the re-alignment of other agency/organizational boundaries to the WEM regions.

Mass Evacuation Planning Issues:

Beginning in October of 2005, WEM has been involved in mass evacuation planning for the 12 largest cities in Wisconsin. This planning is being done on a regional basis in the Southeast, Southwest, East Central and West Central Regions where these cities are located. Milwaukee County, the City of Milwaukee and the other counties in the Southeast Region began this planning shortly after Hurricane Katrina. This planning effort includes law enforcement and fire, public health agencies, human services agencies, voluntary agencies such as the Red Cross and Salvation Army, and the DOT Division of Highways. Planning activities include identification of primary and secondary evacuation routes out of Milwaukee and their extension into surrounding counties, identification of shelter facilities in the Southeast region, consideration of

evacuees with special needs, warning of the public, crisis communications, and traffic control. The point of this planning is not only to be able to evacuate people out of Milwaukee but to prepare surrounding counties to receive evacuees. The planning materials developed in the Southeast Region are being used as templates in the other WEM Regions in which the remainder of the 12 largest cities are located. These Regions are holding their own planning meetings with the same groups represented in the planning effort. The planning materials are being modified as necessary to meet conditions that are particular to each Region.

In December of 2006, WEM became involved in a planning initiative with the City of Chicago and FEMA Region V to begin planning for a 200 hundred mile evacuation zone around the City of Chicago. In Wisconsin this included the Southeast, East Central and Southwest Regions. We intend to use what we have developed in our mass evacuation planning efforts as a basis for this planning while also recognizing there will be an impact on the entire state. This planning effort will continue throughout 2007.

Additional Possible Legislative Initiatives:

- The current Wisconsin statutory scheme requires the marking of public transmission facilities on property prior to excavation using paint, flags and stakes complying with certain color codes adopted by the American National Standards Institute. This law does not apply to marking privately owned and installed transmission facilities on property. In light of the tragic Ellison Bay incident, the Committee may wish to consider potential remedial legislation amending §182.0175 of the Wisconsin Statutes to require the marking of **privately** owned and installed transmission facilities prior to excavation on public or private property.
- Fire drills in schools have been a longstanding statutory requirement under §118.07, Wis. Stats. dating back to 1927 and the Wisconsin Industrial Commission. Surprisingly, there is no statutory requirement for tornado drills/evacuation drills in schools. Since July 1996, at least four public schools in Wisconsin have suffered significant damage from tornados and severe weather. Further, the National Weather Service's statistics reveal that Wisconsin has an average of 21 tornados per year. Neighboring states have effected recent changes to their state laws requiring tornado drills in schools. As an example, the State of Ohio has recently changed their state law to require any school with an average daily attendance of twenty or more pupils to conduct tornado drills at least once a month during the tornado season. The Committee may also wish to consider extending this requirement to licensed day care centers with an average daily attendance of twenty or more children as well as to universities, colleges and the technical schools. Additionally, there are printing costs associated with materials relevant to tornado drills and tornado awareness week. In the past, the Department of Public Instruction (DPI) has assisted WEM with the distribution of these materials. Unfortunately, DPI will be unable to assist with the distribution

this year due to costs, limited staffing and an increase in outside requests. As such the Committee may wish to consider a continuing funding source for these materials. Lastly, the Committee may want to consider reporting requirements for tornado drills and associated administrative costs for the agency responsible for tracking these requirements.

I hope this information meets your needs. If additional information is required, please contact my office.

Sincerely,

Johnnie L. Smith, Administrator
Wisconsin Emergency Management

#10

Karls, Jessica

From: ed huck [ed@wiscities.org]
Sent: Tuesday, December 19, 2006 10:19 AM
To: Karls, Jessica
Subject: Re: Open Meetings Law During Emergency

I have not taken this to my membership, but I have grave reservations about creating exceptions.

----- Original Message -----

From: Karls, Jessica
To: ed@wiscities.org
Sent: Monday, December 18, 2006 3:00 PM
Subject: Open Meetings Law During Emergency

Dear Mr. Huck,

On behalf of the Special Committee on Disaster Preparedness Planning, I have been asked to contact you regarding open meetings during declared emergencies. In particular, the Committee wants to know whether the Alliance of Cities believes that changes should be made to the open meetings law that would apply during declared emergencies. If so, what changes does the Alliance of Cities suggest?

Thank you for your time.

Sincerely,

Jessica L. Karls
Staff Attorney
Wisconsin Legislative Council
(608) 266-2230

Karls, Jessica

From: Curt Witynski [witynski@lwm-info.org]
Sent: Tuesday, December 19, 2006 4:32 PM
To: Karls, Jessica
Subject: Re: Open Meetings Law During Emergency
Attachments: emergency gov.comment 2001.pdf

Hi Jessica: I've attached an article that discusses the emergency powers of municipal government that appeared in The Municipality magazine in November 2001. I believe that Wis. Stats., ch. 166, dealing with emergency management, provides municipal officials with sufficient authority to ignore open meetings law requirements under certain circumstances. For example, sec. 166.06(2) allows municipal governing bodies to meet in temporary locations to conduct the public business while facing a state of emergency. Municipal governing bodies may, under such circumstances, exercise their powers "without regard to or compliance with time-consuming procedures and formalities prescribed by law."

Also, sec. 166.23(3) allows a municipal chief executive officer to exercise all of the powers conferred upon the governing body if the governing body is unable to meet promptly due to emergency conditions.

I believe these provisions probably provide municipal elected officials with the powers and flexibility necessary to take action without need to comply with open meetings law requirements when facing an emergency situation.

Thanks for the inquiry.

I'd be happy to discuss this further with you or members of the committee.

Curt Witynski
Assistant Director
League of Wisconsin Municipalities
122 W. Washington, Suite 300
Madison, WI 53703
(608) 267-2380

>>> "Karls, Jessica" <Jessica.Karls@legis.wisconsin.gov> 12/18/2006 2:59 PM >>>

Dear Mr. Witynski,

On behalf of the Special Committee on Disaster Preparedness Planning, I have been asked to contact you regarding open meetings during declared emergencies. In particular, the Committee wants to know whether the League of Wisconsin Municipalities believes that changes should be made to the open meetings law that would apply during declared emergencies. If so, what changes does the League of Wisconsin Municipalities suggest?

Thank you for your time.

Sincerely,

Jessica L. Karls
Staff Attorney
Wisconsin Legislative Council

1/8/2007

LEGAL COMMENT

Municipal Emergency Powers and Municipal Obligations to Employees Serving in the Military

By Claire Silverman
Legal Counsel

On September 11, 2001, the entire nation's attention was focused on New York City and the efforts of its mayor and city police, fire, and emergency personnel to comprehend and respond to the enormous devastation and loss caused by the attack on New York's World Trade Center. That attack, and the events that have transpired since then, raise a number of issues of concern to municipalities.

This legal comment will address two of those issues. First, the attack has probably caused many municipalities to evaluate their own municipal emergency plans and consider how well their municipality would be able to respond to an emergency or act of terrorism in their community.

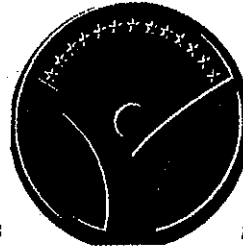
Second, the United States' mobilization of its military forces to respond to the World Trade Center attack is likely to affect, if it hasn't already, the workforce

of any municipalities that employ persons who are members of the military reserve or the National Guard. This legal comment highlights emergency powers of Wisconsin's local governments and explains the obligations municipal employers have under federal and state law to those municipal employees who are called to military service.

I. LOCAL GOVERNMENT EMERGENCY POWERS

Although it is probably impossible to ever be fully prepared for an emergency of such magnitude, the September 11th attack on New York's World Trade Center certainly drove home the importance of being as prepared as possible for a local emergency. It also served to highlight the significant contributions of safety and emergency personnel and our dependence on those personnel, as well as how the public looks to its local officials to provide guidance and reassurance in such difficult times. In light of the September 11th attack and given an increased likelihood of future acts of terrorism, now is a good time for municipalities to reevaluate emergency plans. Municipalities need to plan not only how to respond to such events if they occur, but also must consider ways to prevent such acts from happening.

Last year, the National League of Cities (NLC) published a guide for local officials entitled, *Domestic Terrorism: Re-*



sources for Local Government. The guide contains a lot of information and can be a valuable tool for municipalities reviewing and updating preparedness plans. The guide can be viewed in its entirety on the NLC's website, <www.nlc.org>.

Are Wisconsin municipalities required to have emergency plans? What if a municipality has not created such a plan? What powers do Wisconsin municipalities have during an emergency? This section of the legal comment attempts to answer those questions.

Chapter 166 of the Wisconsin Statutes covers emergency management. The purpose of the chapter is to "prepare the state and its subdivisions to cope with emergencies resulting from enemy action and natural or man-made disasters"¹ Under state law, the governing body of each municipality must adopt an "effective program of emergency management" consistent with the State plan of emergency management and appoint a head of emergency management services.² Governing bodies are authorized to appropriate funds and levy taxes for the emergency management program.

Each county must also adopt an emergency management program and appoint a head of emergency management. In counties with a county executive, the county board must designate the executive or his or her appointee as the head of emergency management. The county emergency management head is responsi-

see Emergency Powers
continued on page 408

1. Wis. Stats. §166.01.

2. Wis. Stats. § 166.03.

3. Wis. Stats. §166.03(5)(b).

“If a municipality fails
to establish and maintain
an operating emergency
management
organization, the
Wisconsin department of
military affairs’ adjutant
general can refuse to
approve grants of funds
or equipment to the
municipality until it
complies.”

Emergency Powers
from page 407

ble for assisting municipalities within the county with developing emergency management plans and coordinating plans within the county, and integrating municipal plans with the county plan.³

The head of emergency management services in each municipality is required to develop and promulgate the municipality’s emergency management plans consistent with state plans, direct the emergency management program and perform such other duties related to emergency management as the governing body and any emergency management committee of the governing body requires.⁴ The head of emergency management is also responsible for directing local emergency management training programs and exercises, directly participating in emergency management programs and exercises ordered by the Wisconsin department of military affairs’ adjutant general and the county head of emergency management services, and must advise the county head of emergency management services on local emergency management programs and submit such reports to the county head as he or she requires.⁵

If a municipality fails to establish and maintain an operating emergency management organization, the Wisconsin department of military affairs’ adjutant general can refuse to approve grants of funds or equipment to the municipality until it complies.⁶

During a state of emergency, if it becomes “imprudent, inexpedient or impossible” to conduct the affairs of local government at the place where it is usually conducted, a municipality’s governing body is authorized to meet at any place within or without the territorial limits of the municipality on the call of the presiding officer or his or her successor. The governing body must establish and design-

nate by ordinance, resolution or other manner, alternate or substitute sites as the emergency temporary locations of government where all, or any part, of the public business may be transacted and conducted during the emergency situation.⁷

While the public business is being conducted at an emergency temporary location, the governing body and other municipal officers shall have and exercise, at such location, all of the executive, legislative, administrative and judicial powers and functions conferred upon such body and officers under state law. Such powers and functions, except judicial, may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto. All acts of such body and officers shall be as valid and binding as if performed within the territorial limits of their municipality.⁸

The governing body of any municipality may enact such ordinances and resolutions as are necessary to provide for the continuity of government in the event of and throughout the duration of a state of emergency resulting from enemy action.⁹ Such ordinances and resolutions must provide a method by which temporary emergency appointments to public office are made, except as limited by express constitutional provisions, and must define the scope of the powers and duties which may be exercised, and provide for termination of the appointment so made.¹⁰

Wisconsin law empowers the governing body of any municipality, notwithstanding any other provision of law to the contrary, to declare, by ordinance or resolution, an emergency existing within the city, village or town whenever conditions arise “by reason of war, conflagration [fire], flood, heavy snow storm, blizzard, catastrophe, disaster, riot or civil commotion, acts of God, and including conditions, without limitation because of enu-

4. Wis. Stats. § 166.03(5)(a).

5. Wis. Stats. § 166.03(5)(c).

6. Wis. Stats. § 166.03(13).

7. Wis. Stats. § 166.06.

8. *Id.*

9. Wis. Stats. § 166.07.

10. *Id.* and Wis. Stats. § 166.08(6).

meration," which impair transportation, food or fuel supplies, medical care, fire, health or police protection or other vital facilities of the municipality.¹¹ The ordinance or resolution must limit the emergency period to the time during which the emergency conditions exist or are likely to exist.¹² The governing body's emergency power includes the general authority to order, by ordinance or resolution, whatever is necessary and expedient for the municipality's health, safety, welfare and good order and includes, without limitation because of enumeration, the power to bar, restrict or remove all unnecessary traffic, both vehicular and pedestrian, from the local highways, notwithstanding any contrary provisions of law. The governing body is authorized to provide penalties for violation of any emergency ordinance or resolution not to exceed a \$100 forfeiture or, in default of payment of the forfeiture, six months' imprisonment for each separate offense.¹³

If the municipality's governing body is unable to meet with promptness because of the emergency conditions, the chief executive officer or acting chief executive officer of any city, village or town shall exercise by proclamation all of the powers conferred upon the governing body which within the officer's discretion appear necessary and expedient. The proclamation is subject to ratification, alteration, modification or repeal by the governing body as soon as that body can meet, but the subsequent action taken by the governing body does not affect the prior validity of the proclamation.¹⁴

II. MUNICIPAL OBLIGATIONS TO EMPLOYEES IN MILITARY SERVICE

This section of the legal comment summarizes federal and state laws protecting

members of the uniformed services engaged in civilian employment. Although these laws are too extensive to cover in their entirety, the major provisions of the laws are summarized below.

FEDERAL LAW

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA),¹⁵ is the latest version in a series of statutes enacted since the 1940s to protect members of the uniformed services engaged in civilian employment. USERRA has three primary purposes:

- 1) It is intended to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; and
- 2) to minimize the disruption to the lives of persons performing service in the uniformed services by providing for the prompt reemployment of such persons upon their completion of such service; and
- 3) to prohibit discrimination against persons because of their service in the uniformed services.¹⁶

The term "uniformed services" means the "Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency."¹⁷

USERRA prohibits an employer from denying a person who has served in, currently serves in or who has applied to serve in the uniformed services "initial employment, reemployment, retention in employment, promotion or any benefit of employment" on the basis of the individual's membership in the uniformed services.¹⁸ USERRA also protects the right of members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.¹⁹

An employee whose absence from a position of employment is required by reason of service in the uniformed services is entitled to the reemployment rights and benefits under USERRA if the person meets certain criteria for eligibility:

- 1) The person gives the employer advance written or verbal notice of the service (no notice is required if military necessity prevents notice from being given or if, under all of the circumstances, giving such notice is impossible or unreasonable);²⁰ and
- 2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years (with certain specific exceptions);²¹ and
- 3) the person has not been dishonorably discharged or separated from the uniformed service under other than honorable conditions;²² and
- 4) the employee reports to, or submits an application for reemployment to the

see **Emergency Powers**
continued on page 411

11. Wis. Stats. § 166.23(1).

12. *Id.*

13. Wis. Stats. § 166.23(2).

14. Wis. Stats. § 166.23(3).

15. 38 U.S.C. §§ 4301-4333.

16. 38 U.S.C. § 4301.

17. 38 U.S.C. § 4303(16).

18. 38 U.S.C. § 4311.

19. 38 U.S.C. § 4312.

20. 38 U.S.C. § 4312(a)(1) and (3)(b).

21. 38 U.S.C. § 4312(c).

22. 38 U.S.C. § 4304.

Emergency Powers
from page 409

employer within certain time periods based on the employee's length of military service.

The period an individual has to apply for reemployment or report back to work after military service is based on the length of the military service. For service of less than 31 days, the service member must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account sufficient time for safe travel home plus an eight-hour rest period. For service of more than 30 days but less than 181 days, the service member must apply for reemployment within 14 days of being released from service. For service of more than 180 days, the member must apply for reemployment within 90 days of being released from service. Failure to apply for reemployment within the specified time periods does not automatically forfeit the person's entitlement to reemployment, but subjects the person to the employer's general practices pertaining to explanations and discipline with respect to absence from scheduled work.

If the individual is hospitalized or recovering from an illness or injury incurred in or aggravated by the military service, the individual shall report to the employer or apply for reemployment at the end of the period of time necessary for recovery. The recovery period may not exceed two years unless circumstances beyond the person's control make reporting within the time period impossible or unreasonable.²³

An employer is not required to reemploy a person if the employer's circumstances have so changed as to make such reemployment impossible or unreasonable, or if reemployment would impose an undue hardship on the employer or if the employment from which the person leaves to serve in the uniformed services is for a

brief, nonrecurrent period and there is no reasonable expectation that the employment will continue indefinitely or for a significant period.

In addition to providing a right to be reemployed, USERRA also protects an employee's right to benefits the employee would have received if he or she had not left for service. An employee whose absence from a position of employment is required by reason of service in the uniformed services is deemed to be on furlough or leave of absence, and is entitled to all rights and benefits which are due to such employees pursuant to the rules and regulations of the employer.²⁴

Although USERRA does not require that employers pay an employee wages while the employee is performing military service, and Wisconsin law explicitly prohibits payment of wages as explained below, it expansively defines "benefits" as "any advantage, profit, privilege, gain, status, account, or interest ... that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment."²⁵ Individuals performing military duty of more than 30 days may elect to continue employer sponsored health care for up to 18 months; however, they may be required to pay up to 102 percent of the full premium. For military service of less than 31 days, health care coverage is provided as if the service member had remained employed. USERRA applies to all pension plans.

USERRA sets forth a priority for reemployment of persons completing a period of service in the uniformed ser-

see *Emergency Powers*
continued on page 412

“AN EMPLOYEE WHOSE
ABSENCE FROM A POSITION
... IS REQUIRED BY REASON
OF SERVICE IN THE
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SUCH EMPLOYEES PURSUANT
TO THE RULES AND
REGULATIONS OF THE
EMPLOYER.”

23. 38 U.S.C. § 4312.
24. 38 U.S.C. § 4316

25. 38 U.S.C. § 4303(2).

“THE FEDERAL LAW
SUPERSEDES ANY
STATE LAW OR LOCAL
ORDINANCE,
CONTRACT OR
AGREEMENT THAT
REDUCES, LIMITS OR
ELIMINATES ANY RIGHT
OR BENEFIT PROVIDED
by THE FEDERAL
LAW...”

Emergency Powers from page 411

vices based on the length of the service. As a general rule, the returning employee is entitled to reemployment in the position he or she would have held had the person remained continuously employed. However, if the returning employee is not qualified for that position and cannot become qualified with reasonable efforts by the employer, the employee is entitled to the job that he or she left, or a position of equivalent seniority, status, and pay. If the employee is not qualified for that position for any reason other than service-related disability and cannot become qualified through the employer's reasonable efforts, the employee must be employed in any other position for which he or she is qualified and that most nearly approximates his or her former position.

If a former employee is not qualified due to a disability suffered during military service, and the disability cannot be reasonably accommodated, the employee must be reemployed in a position with seniority, status and pay comparable to the position he or she would have occupied had employment not been interrupted. If the employee cannot be qualified for a position, the employer must place the person in a job which retains the nearest approximation to the seniority, status and pay the person would have had if his or her employment had not been interrupted.

When a former employee returns from a period of ununiformed service and applies for reemployment, the employer has the right to request documentation proving that the employee's application is timely; that the length of service did not exceed five cumulative years; and that the person's reemployment rights have not been extinguished due to a dishonorable discharge, or discharge under other than honorable circumstances. A person need not produce documentation if what is re-

quested is not available or does not exist. However, if the appropriate documentation later becomes available and establishes that the employee's military service ended for a reason that would extinguish the person's reemployment rights, the employer may terminate the person.

The federal law supersedes any state law or local ordinance, contract or agreement that reduces, limits or eliminates any right or benefit provided by the federal law, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.²⁶ However, the law does not supersede any state or local law or contract that establishes rights or benefits more beneficial to military employees.²⁷

USERRA is administered by the Department of Labor, through the Veterans' Employment and Training Service (VETS). Questions regarding employee rights and obligations under USERRA should be referred to your local VETS office. The number for the VETS office in Madison, Wisconsin is (608) 266-3110.

STATE LAW

State law provides employees in ununiformed service with protections similar to federal law.²⁸ In any instance where Wisconsin law is less favorable than current federal law, federal law must be followed. Wisconsin law requires that a municipality restore a municipal employee who leaves to perform a period of military service to a position of like seniority, status, pay and salary advancement as though service toward seniority, status, pay or salary advancement had not been interrupted by the service if the person:

- 1) Presents the municipality with evidence that he or she satisfactorily completed the service, or was discharged from the armed forces under conditions other than dishonorable;

26. 38 U.S.C. § 4302.

27. *Id.*

28. Wis. Stats. § 45.50.

- 2) is still qualified to perform the duties of such position;
- 3) applies for reemployment and resumes work within 90 days after completing the service, or discharge from the armed forces, or within 6 months after release from hospitalization for service-connected injury or disease; and
- 4) the employer's circumstances have not so changed as to make it impossible or unreasonable to restore the person; and
- 5) the military service was not for more than 4 years unless extended by law (federal law provides a 5-year period).²⁹

No employee or officer who is appointed to fill the place of any employee or officer who leaves to perform a period of military service shall acquire permanent tenure during such period of replacement service.³⁰

Wisconsin law prohibits municipalities from paying the employee any salary or compensation during the leave of absence.³¹ Like federal law, State law provides that the service of any person who is or was restored to a position shall be deemed not to be interrupted by the absence, except for the receipt of pay or other compensation for the period of the absence, and that he or she shall be entitled to participate in insurance, pensions, retirement plans or other benefits offered by the employer under established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time the person entered or was enlisted, inducted or ordered into the forces and service. After the employee is restored, state law prohibits the employee from being discharged from the position without cause within one year. The discharge is subject to all federal or state law affecting any municipal or pri-

vate employment, and to the provisions of contracts that may exist between employer and employee.

State law requires that municipalities contribute or pay all employer contributions to the applicable and existent pension, annuity or retirement system as though the employee's service of the employee had not been interrupted by military service.

Municipal officials may be interested to know that, in addition to protecting the rights of municipal employees, state law also protects the term of elected and appointed officials and employees who temporarily leave the municipality for military service. If an elected or appointed municipal official or employee enters the armed forces of the United States and is temporarily removed from the municipality for which that person is an officer or employee, the temporary removal constitutes a temporary vacancy in the office or position. Temporary vacancies must be filled as other vacancies are filled, except that no election need be held to fill any part of a temporary vacancy. The term of the person appointed temporarily shall not extend beyond the expiration of the term of the officer or employee who entered federal service. If the original officer or employee completes the federal service and returns to the municipality during his or her original term of office, the officer or employee may file with the municipal clerk, within 40 days of completing the federal service, a statement under oath that the federal service has terminated and that the officer or employee elects to resume the office or position. Upon the filing of the statement, the term of the temporary officer or employee shall cease, and the returning officer or employee shall be entitled to resume the office.³²

Powers of Municipalities 882

Employees 301

“ IF AN ELECTED OR
APPOINTED MUNICIPAL
OFFICIAL OR EMPLOYEE ENTERS
THE ARMED FORCES OF THE
UNITED STATES AND IS
TEMPORARILY REMOVED FROM
THE MUNICIPALITY FOR WHICH
THAT PERSON IS AN OFFICER
OR EMPLOYEE, THE
TEMPORARY REMOVAL
CONSTITUTES A TEMPORARY
VACANCY IN THE OFFICE OR
POSITION.”

29. *Id.*

30. Wis. Stats. § 45.51(3).

31. Wis. Stats. § 45.51(1).

32. Wis. Stats. §§ 17.035 and 45.51(4).

Sweet, Richard

From: Karls, Jessica
Sent: Monday, January 08, 2007 3:42 PM
To: Shannon, Pam; Sweet, Richard
Subject: FW: Mass Clinic Pharmacies (Resend)

FYI ...

Jessica L. Karls
 Staff Attorney
 Wisconsin Legislative Council
 (608) 266-2230

From: Black, William - DRL
Sent: Monday, January 08, 2007 3:42 PM
To: Karls, Jessica
Subject: RE: Mass Clinic Pharmacies (Resend)

Yes, the Board proactively got the following passed in 2005:

450.02(3m)(a)

(a) The board or its designee may grant a variance to a requirement of this chapter or to a rule promulgated by the board if all of the following are true:

1. The board or its designee determines that a natural or man-made disaster or emergency exists or has occurred.
2. A pharmacist has requested the variance.
3. The board or its designee determines that the variance is necessary to protect the public health, safety, or welfare.

(am) If a member of the board disagrees with a decision made by a designee under par. (a), the board chairperson shall call a meeting of the board as soon as practicable to review the decision. The board may affirm or modify the designee's decision.

(b) A variance granted under par. (a) shall be for a stated term not to exceed 90 days, except that the board or its designee may extend the variance upon request by a pharmacist if it determines that an extension is necessary to protect the public health, safety, or welfare.

So, the Board has pretty much carte blanche to meet contingencies in the event of a disaster. And, by the way, so long as a person is authorized, that person could pick up meds for 10 people at a time even now. Perfectly legal.

From: Karls, Jessica [<mailto:Jessica.Karls@legis.wisconsin.gov>]
Sent: Monday, January 08, 2007 3:25 PM
To: Black, William - DRL
Subject: Mass Clinic Pharmacies (Resend)

Dear Bill,

I am working on the Legislative Council's Disaster Preparedness Planning Committee. One of the committee's suggestions has been to implement mass clinic pharmacies during declared emergencies where people can obtain emergency drugs and

supplies for their family members. The Minnesota Department of Health has a policy in which the head of a household can pick up medications at a mass dispensing site for up to ten individuals without those individuals being present. Does the Pharmacy Examining Board have any plans to implement such a program?

I appreciate whatever information you can provide.

Sincerely,

Jessica L. Karls
Staff Attorney
Wisconsin Legislative Council
(608) 266-2230



State of Wisconsin #12

JIM DOYLE
Governor

DAVID STEINGRABER
Executive Director

131 W Wilson Street
Suite 610
Madison WI 53702-0001

Phone: (608) 266-3323
Fax: (608) 266-6676
www.oja.wi.gov

Tuesday, January 09, 2007

Representative Joan Ballweg, Chair
Joint Legislative Council Committee on Emergency Preparedness
One East Main Street, Suite 401
P.O. Box 2536
Madison, WI 53701

Dear Representative Ballweg,

On behalf of the Office of Justice Assistance and our homeland security program unit, I thank you for our opportunity to speak in front of the Joint Legislative Council's Special Committee on Disaster Preparedness and Planning and for your recommendations on mutual aid agreements. I believe your work will be a substantial contribution to emergency preparedness in Wisconsin.

Since assuming responsibility as the state administering agency for federal homeland security funding, OJA has included regional initiatives under mutual aid agreements between local emergency response agencies as a key element in our homeland security strategy. Working in conjunction with the Governor's Homeland Security Council, we have allocated over \$11.6 million in federal funding for the development of regional multi-jurisdictional emergency response capabilities. A current condition on all OJA homeland security grants requires that "equipment purchased with this grant should be deployed consistent with current mutual aid agreements with surrounding jurisdictions."

In response to your recommendation, we will expand that special condition to encourage agencies to develop agreements where none exist and exercise current mutual aid agreements to ensure their viability. We will continue to work with Wisconsin Emergency Management to promote regional response as part of Wisconsin's overall emergency response strategy. As you know, this effort will also include the refinement of existing mutual aid legislation and the enactment of new legislation, as warranted, as well as the establishment of a governance structure to ensure the effectiveness of multi-jurisdictional responses.

I thank you for your efforts in this regard. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

David Steingraber
Executive Director