

CONTROL MEASURES AND PUBLIC HEALTH EMERGENCIES

A TEXAS BENCH BOOK

Sec. 81.085. AREA QUARANTINE; CRIMINAL PENALTY. (a) If an outbreak of a communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine coextensive with the area affected. The commissioner may impose an area quarantine, if the commissioner has reasonable cause to believe that persons or property in the area may be infected or contaminated with a communicable disease during the period necessary to determine whether an outbreak of communicable disease has occurred. A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.

(b) A health authority may not impose an area quarantine until the authority consults with the department. A health authority that imposes an area quarantine shall give written notice to the governing body of each county and municipality in the health authority's jurisdiction that has territory in the affected area as soon as practicable.

The department may impose additional disease control measures in a quarantine area that considers necessary and most appropriate to arrest, control, and prevent the spread of the disease. Absent preemptive action by the department under Chapter 418, Government Code (Texas Disaster Act), a health authority may not impose a quarantine area under the authority's jurisdiction unless the health authority considers necessary and most appropriate to arrest, control, and prevent a threat to the public health.

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Contains flowcharts and sample forms

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CHAPTER 6

MASS CASUALTY AND MASS FATALITY INCIDENTS

Some public health emergencies may result in large numbers of casualties, i.e., people killed or injured by an outbreak of disease, accident, bioterrorism attack, or other disaster. Emergency management and public health preparedness authorities often separate mass casualty planning and response into two distinct categories: (1) mass casualty incidents (MCIs) which focus on medical treatment of living casualties and (2) mass fatality incidents (MFIs) which focus on management of deceased casualties. There is no static numerical threshold to determine whether an incident rises to the level of MCI or MFI. MCIs and MFIs are usually declared when the number of casualties (patients or fatalities) in a jurisdiction at a given time rises to a level which cannot be effectively managed using local health care and emergency resources. Such incidents require external emergency coordination and assistance.²¹²

Both MCIs and MFIs require planning efforts and cross-jurisdictional cooperation to manage these situations effectively. Whereas some jurisdictions, such as rural communities, will need to engage MCI or MFI protocols in response to an incident with a small number of casualties, jurisdictions with more resources and greater capacity, such as major urban areas, may be able to manage the same situation within its existing infrastructure. For example, 10 simultaneous patients may overwhelm a rural emergency department and EMS trauma system and may constitute an MCI, whereas a large urban city may routinely manage similar patient levels.

Mass Casualty Incidents

In the public health context, mass casualties can result, for example, from a naturally occurring communicable disease, the introduction of biological agents by criminal actors, or precipitated by a natural disaster such as a hurricane. The central tenet of MCI planning and response is the coordination of local, regional, state, and federal resources to confront an event that has exhausted local resources.

Jurisdictions can prepare for MCIs by incorporating mass casualty planning into their emergency management plans. The Texas Department of Public Safety Division of Emergency Management maintains the State Emergency Management Plan²¹³ and the Public Health and Medical Annex contains guidance on MCI and MFI coordination and response.²¹⁴ Each county and incorporated city in Texas is required to maintain an emergency management agency or participate

212 See WORLD HEALTH ORG., MASS CASUALTY MANAGEMENT SYSTEMS: STRATEGIES AND GUIDELINES FOR BUILDING HEALTH SECTOR CAPACITY 9 (2007), http://www.who.int/hac/techguidance/MCM_guidelines_inside_final.pdf; PAN AM. HEALTH ORG., ESTABLISHING A MASS CASUALTY MANAGEMENT SYSTEM 3 (2001); TEX. DEP'T OF STATE HEALTH SERV., MASS FATALITY MANAGEMENT PLANNING TOOLKIT 9 (Feb. 2015), <https://www.dshs.state.tx.us/commprep/planning/toolkits/2015-Mass-Fatality-Management-Planning-Toolkit.pdf>.

213 37 TEX. ADMIN. CODE § 7.11. The State Emergency Management Plan and Annexes are available at <https://tdem.texas.gov/state-of-texas-emergency-management-plan/>.

214 PUBLIC HEALTH AND MEDICAL ANNEX (ESF-8), STATE OF TEXAS EMERGENCY MANAGEMENT PLAN (Jan. 2017), https://tdem.texas.gov/wp-content/uploads/2020/01/2020_01_28_Texas_Public_Health_and_Medical_Annex_ESF8.pdf.

in a local or interjurisdictional emergency management agency.²¹⁵ Each local emergency management agency is required to prepare and maintain a local emergency management plan.²¹⁶ An emergency plan contains a basic plan and numerous annexes. The basic plan outlines a jurisdiction's approach to emergency operations and provides general guidance for emergency management activities, while the annexes describe in more depth the operational details. Jurisdictions can incorporate mass casualty and mass fatality planning in their emergency management plans in a way similar to the state emergency management plan. Emergency management plans are reviewed annually and must be updated every five years.²¹⁷ An emergency management plan may provide that failure to comply with the plan or with a rule, order, or ordinance adopted under the plan is an offense.²¹⁸ The plan may prescribe a punishment for the offense, but may not prescribe a fine that exceeds \$1,000 or confinement in jail for a term that exceeds 180 days.²¹⁹

Emergency response is the responsibility of the local jurisdiction. MCIs, by definition, require assistance from a neighboring or encompassing jurisdiction. Texas law has specified a sequence for requesting assistance. The law requires that localities first seek assistance from the county's local or interjurisdictional emergency management program.²²⁰ If local and mutual aid resources prove inadequate, the local government may then request assistance from the state by contacting the local Disaster District Committee Chairperson, who is the commanding officer of the Texas Highway Patrol district or sub-district in which the jurisdiction is located.²²¹ Texas is divided into disaster districts and a Disaster District Committee is established for each to coordinate the deployment of emergency assets within its district.²²² The Disaster District Committee will contact the Texas Division of Emergency Management State Operations Center if the resources of a disaster district are inadequate.

A local jurisdiction may request regional public health and medical coordination from the Department of State Health Services (DSHS) Health Service Region office if an incident overwhelms the resources of a local jurisdiction (whether or not the local jurisdiction also has a local health authority). Texas is divided into 11 Health Service Regions, but for administrative purposes are served by eight regional offices that coordinate public health responses.²²³ Health Service Region offices can provide assistance and help coordinate public health responses for the cities and counties within its jurisdiction.²²⁴ Health Service Region offices can also activate a Regional Health and Medical Operations Centers (RHMO) to coordinate regional public health and medical response.²²⁵ If

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215 37 TEX. ADMIN. CODE § 7.11.

216 37 TEX. ADMIN. CODE § 7.12.

217 *Id.*

218 TEX. GOV. CODE § 418.173(a).

219 TEX. GOV. CODE § 418.173(b).

220 TEX. GOV. CODE § 418.102(b).

221 37 TEX. ADMIN. CODE § 7.24.

222 TEX. GOV. CODE § 418.113(a)-(c).

223 Tex. Dep't of State Health Serv., Cent. for Health Statistics, *Texas County Numbers and Public Health Regions*, https://www.dshs.state.tx.us/chs/info/info_txco.shtm.

224 PUBLIC HEALTH AND MEDICAL ANNEX (ESF-8), STATE OF TEXAS EMERGENCY MANAGEMENT PLAN (Jan. 2017), https://tdem.texas.gov/wp-content/uploads/2020/01/2020_01_28_Texas_Public_Health_and_Medical_Annex_ESF8.pdf.

225 *Id.*

necessary, the DSHS may activate the State Medical Operations Center (SMOC) to serve as the state public health and medical coordination center.²²⁶

Regional Advisory Councils (RACs) also play a role in MCI response as the principal function of a RAC is to develop, implement, and monitor a regional EMS trauma system plan.²²⁷ RAC plans include contingencies for alternate health care locations to augment surge capacity once the surge capacity of a hospital is exceeded by patient demand.²²⁸ Texas is divided into 22 Trauma Service Areas²²⁹ and a RAC serves each Trauma Service Area.²³⁰

Mass Fatality Incidents

MFIs may occur as a result of one isolated event, such as an explosion with multiple fatalities, or as a result of an MCI which has devolved into a situation with multiple deaths. As with MCIs, an MFI occurs when the number of fatalities overwhelms a jurisdiction's infrastructure.²³¹ MFIs introduce additional complexities as resources may be needed to recover and identify the victims, determine the causes of deaths, provide temporary storage of human remains, and ultimately release the remains and personal effects to the victims' families.²³²

MFIs often require collaboration between public health authorities and medico-legal authorities. A medico-legal authority is either a justice of the peace or a medical examiner. Any county having a population of more than two million shall establish and maintain the office of medical examiner, otherwise it is served by a justice of the peace. If a county establishes an office of the medical examiner, all powers and duties of justices of the peace in such county relating to the investigation of deaths and inquests vest in the office of the medical examiner.²³³

One of the primary duties of a medico-legal authority is to conduct an inquest, or an investigation to determine the cause of death and whether the death was caused by an unlawful act.²³⁴ For MFI purposes, the Texas Code of Criminal Procedure requires an inquest by the medico-legal authority when (1) the cause or circumstances of death are unknown; (2) a person dies within 24 hours after admission to a hospital or institution (applicable only for medical examiner inquests); (3) a person dies without having been attended by a physician; (4) a person dies while attended by a physician who is unable to certify the cause of death; (5) the circumstances of the death of any person

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226 *Id.* at 7.

227 TEX. DEP'T OF STATE HEALTH SERV., REGIONAL ADVISORY COUNCIL AND REGIONAL TRAUMA SYSTEM ESSENTIAL CRITERIA RAC IMPLEMENTATION GUIDELINES, 1 (Aug. 2009), https://www.dshs.state.tx.us/emstraumasystems/Essential-Criteria-_revised_.pdf.

228 PUBLIC HEALTH AND MEDICAL ANNEX (ESF-8), STATE OF TEXAS EMERGENCY MANAGEMENT PLAN (Jan. 2017), https://tdem.texas.gov/wp-content/uploads/2020/01/2020_01_28_Texas_Public_Health_and_Medical_Annex_ESF8.pdf.

229 25 TEX. ADMIN. CODE § 157.122(b).

230 25 TEX. ADMIN. CODE § 157.123.

231 TEX. DEP'T OF STATE HEALTH SERV., MASS FATALITY MANAGEMENT PLANNING TOOLKIT, 9 (Feb. 2015), <https://www.dshs.state.tx.us/commprep/planning/toolkits/2015-Mass-Fatality-Management-Planning-Toolkit.pdf>.

232 *Id.* at 4.

233 TEX. CODE CRIM. PROC. art. 49.25 § 12.

234 TEX. CODE CRIM. PROC. art. 49.01(2).

are such as to lead to suspicion that the death was caused by unlawful means.²³⁵ If an MFI is suspected to be an infectious disease outbreak, DSHS and its public health partners will coordinate with and provide guidance on the communicable disease investigation to the medico-legal authority.²³⁶ In the event that a justice of the peace who serves the precinct is not available to conduct an inquest, the inquest shall be conducted by the nearest available justice of the peace in the county. If no other justice of the peace serving the county is available, the County Judge shall initiate the inquest.²³⁷

Another function of the medico-legal authority is to conduct or order the performance of an autopsy.²³⁸ An autopsy is a post-mortem examination of the body to determine the cause of death.²³⁹ An autopsy is not required for every inquest,²⁴⁰ but an autopsy shall be performed if (1) the medico-legal authority determines that an autopsy is necessary to confirm the cause of death; (2) the deceased was a child younger than six years old and the death was determined to be unexpected or the result of abuse or neglect; or (3) so ordered by the district attorney.²⁴¹ A medico-legal authority, however, may not order a person to perform an autopsy on the body of a person whose death was caused by Asiatic cholera, bubonic plague, typhus fever, smallpox, or by a communicable disease during a Public Health Disaster.²⁴²

A body or a body part that is subject to an inquest must be disposed according to the directions of the medico-legal authority.²⁴³ The medico-legal authority, for example, may order a disinterment if a body or body part subject to an inquest was buried prior to an investigation.²⁴⁴ Similarly, a body subject to an inquest may not be cremated unless the body is identified and the medico-legal authority has issued a signed certificate stating that an autopsy was performed on the body or that an autopsy was unnecessary.²⁴⁵ A body generally cannot be cremated within 48 hours after the time of death as indicated on the death certificate but may proceed if the death certificate indicates that death was caused by Asiatic cholera, bubonic plague, typhus fever, smallpox, or if the medico-legal authority waives the requirement in writing.²⁴⁶ During a Public Health Disaster, the DSHS Commissioner may designate other communicable diseases for which cremation within 48 hours of the time of death is authorized.²⁴⁷

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235 TEX. CODE CRIM. PROC. art. 49.04, 49.25 § 6.

236 TEX. DEP'T OF STATE HEALTH SERV., MASS FATALITY MANAGEMENT PLANNING TOOLKIT, 4 (Feb. 2015), <https://www.dshs.state.tx.us/commprep/planning/toolkits/2015-Mass-Fatality-Management-Planning-Toolkit.pdf>.

237 TEX. CODE CRIM. PROC. art. 49.07(c).

238 TEX. CODE CRIM. PROC. art. 49.10.

239 TEX. CODE CRIM. PROC. art. 49.01(1).

240 TEX. CODE CRIM. PROC. art. 49.10(c).

241 TEX. CODE CRIM. PROC. art. 49.10(e).

242 TEX. CODE CRIM. PROC. art. 49.10(d).

243 TEX. CODE CRIM. PROC. art. 49.09.

244 TEX. CODE CRIM. PROC. art. 49.09(a).

245 TEX. CODE CRIM. PROC. art. 49.09(b).

246 TEX. CODE CRIM. PROC. art. 49.25 § 10a.

247 *Id.*