

Emergency Management Assistance Compact: Legal Considerations in 90 Minutes

**NGA Solutions: Center for Best Practices
Homeland Security and Public Safety
In collaboration with the
Centers for Disease Control and Prevention
and the American Bar Association**

October 17, 2019



Agenda and Speakers



Welcome

Moderator: Matthew Penn, JD, MLIS, PHLP, CDC

Expert Panel



- Angela Copple, National Emergency Management Association



- Gregory Sunshine, JD, Centers for Disease Control and Prevention



- Holly Welch, JD, Ohio Emergency Management Agency



Q&A

Upcoming Webinars

Today's Moderator

Matthew Penn, JD, MLIS

Director
Public Health Law Program
Center for State, Tribal, Local, and
Territorial Support
Centers for Disease Control and
Prevention



Angela Copple

EMAC Program Director
National Emergency Management
Association





Emergency Management Assistance Compact



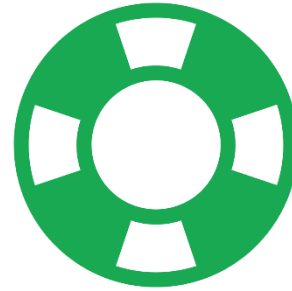
Image: FEMA/Rieger



Overview of the Nation's Mutual Aid System

Emergency Management Assistance Compact: Legal Considerations in 90 Minutes

Every Disaster Is Local



Local → State → Federal

Mutual Aid

- Automatic (< 24 hours)
- Intrastate
- **State (Intrastate)**

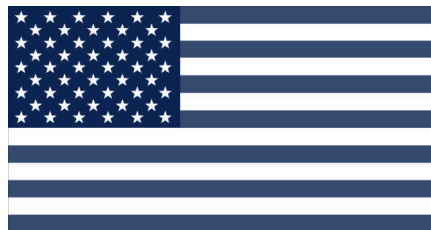
Emergency Management Assistance Compact



EMAC is a state-to-state mutual aid agreement that facilitates the sharing of resources (services, personnel, equipment, & commodities) across **state** lines during times of emergency and disaster.



EMAC Membership



All 50 United States



Puerto Rico



U.S. Virgin
Islands



District of Columbia



Guam



Northern
Mariana

Emergency Management Assistance Compact

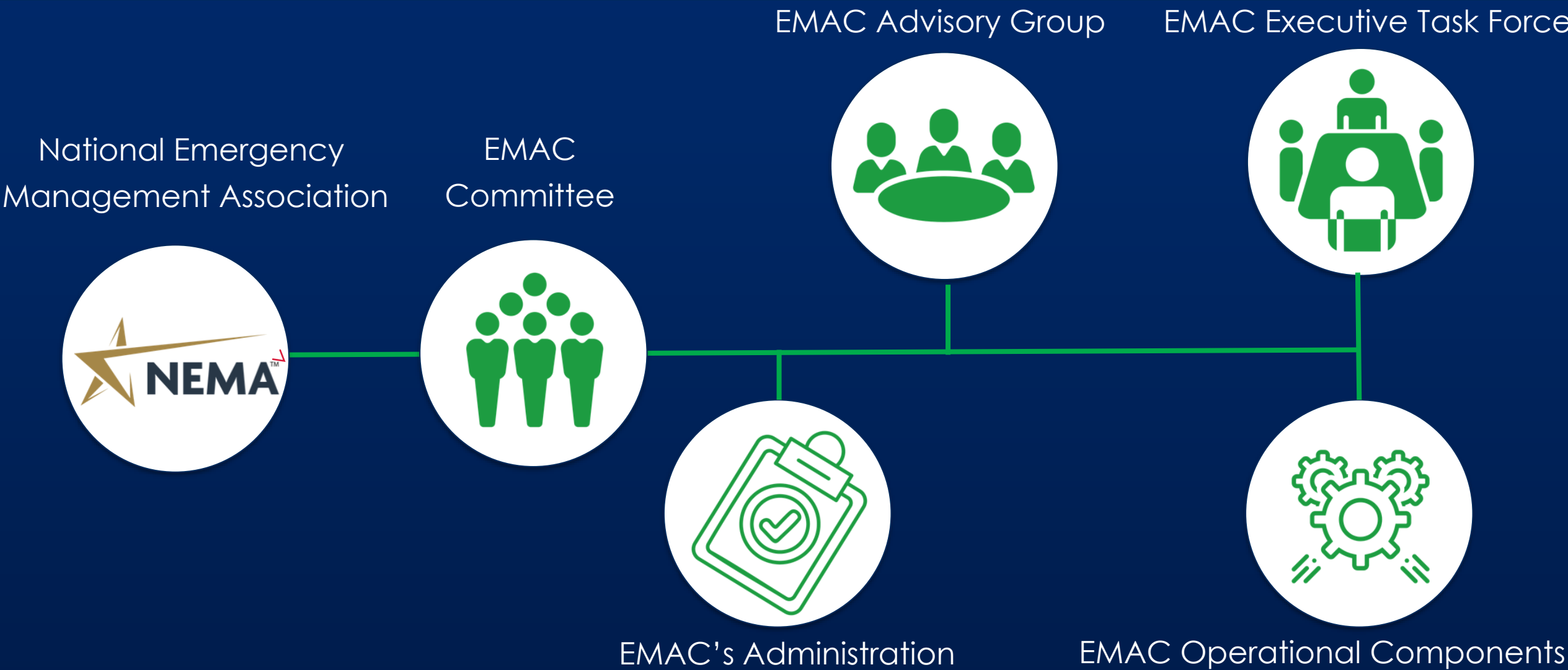
How Can EMAC be Utilized?

- National Guard (Title 32 and SAD)
- Energy
- Cyber
- Transfer of Services
 - Newborn blood screening
 - 911 calls
- Medical Resources
- Public Health
- EMS
- Law Enforcement
- Incident Management
- Communications
- 911 operators/equipment
- Commodities
- Search & Rescue
- Public Works
- Water/Wastewater personnel/equipment
- EOC Support
- Public/Individual Assistance
- Debris Management
- Public Information
- Donations Management
- Human Services
- Sheltering
- And More...

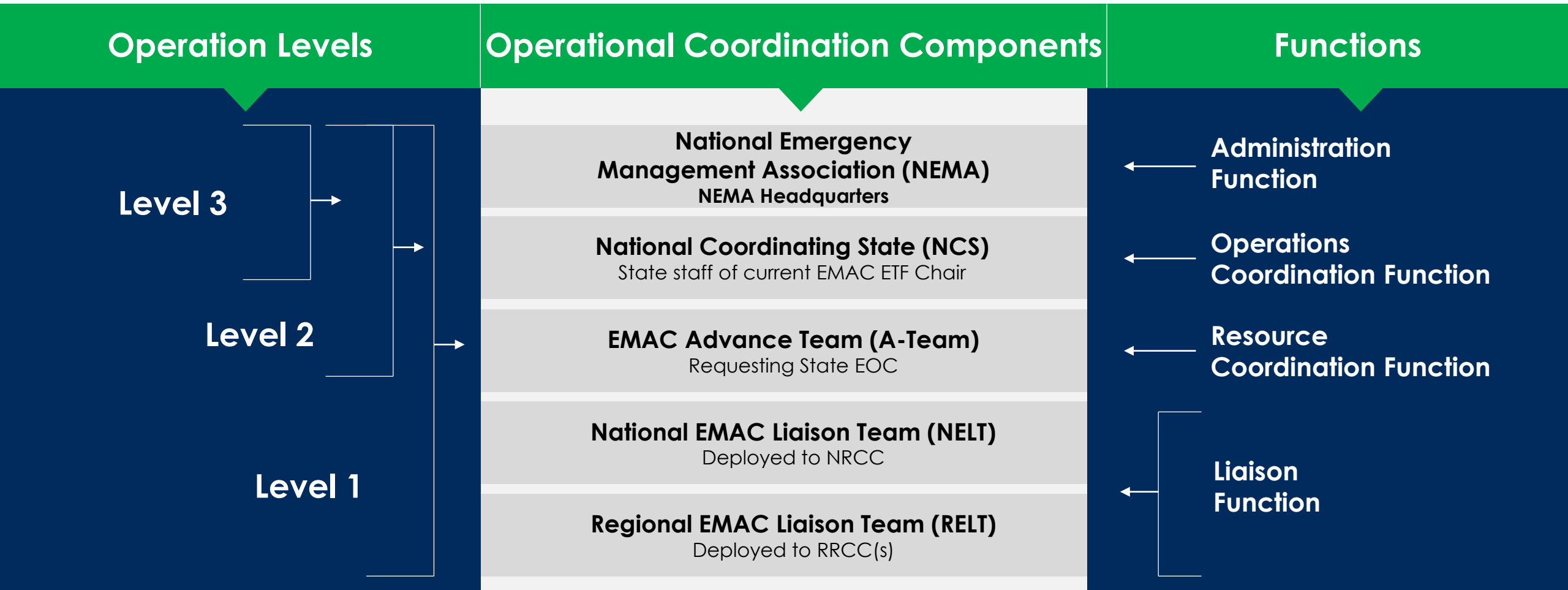


Any Resource/Capability Can Be Shared Between States

EMAC's Robust Governance Structure



EMAC Coordinated with States & Federal Agencies



EMAC Provisions Protections & Standardization



13 Articles
& Standardized
Procedures

EMAC Law
State & Federal Law (Public Law 104-321)

Purpose & Authorities



Article 1



Article 2



Article 3



Article 4



Article 5

To receive resources through EMAC, the Governor has to declare an emergency or disaster

EMAC can be used for training and exercises without a declaration

General Implementation



Article 1



Article 2



Article 3



Article 4



Article 5

“...the prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from...any...source, that are essential to the safety, care, and welfare of the people...”

General Implementation



Article 1



Article 2



Article 3



Article 4



Article 5

EMAC is implemented by the state emergency management agency on behalf of the governor

Party State Responsibilities



Article 1



Article 2



Article 3



Article 4



Article 5

States are responsible for developing plans & procedures to implement EMAC including

- Conduct hazard analysis
- Develop plans/procedures
- Maintain resource inventory
- Gap analysis & resource allocation

Limitations



Article 1



Article 2



Article 3



Article 4



Article 5

A state may withhold resources if they are needed within the home state

Limitations



Article 1



Article 2



Article 3



Article 4



Article 5

With the exception of the powers of arrest, personnel deploying through EMAC have powers, duties, rights and authorities in the Requesting State as they do in their home state

Limitations



Article 1



Article 2



Article 3



Article 4



Article 5

While deployed on an EMAC mission, personnel are under the command and control of their regular leadership but are under the operational control of the emergency services authorities of the Requesting State

Licenses & Permits



Article 1



Article 2



Article 3



Article 4



Article 5

State issued licenses, certificates and permits are be deemed licensed, certified, or permitted by the state requesting state

- Differences in Standards of Practice
- Job Titles differ between jurisdictions

Liability



Article 6



Article 7



Article 8



Article 9



Article 10

Unless found to not be acting in good faith, as an agent of the state, you are protected by that state for **tort liability and immunity purposes**

Compensation



Article 6



Article 7



Article 8



Article 9



Article 10

Assisting States are responsible for providing compensation and death benefits in the same manner and on the same terms as if the injury or death were sustained within their own state

Reimbursement



Article 6



Article 7



Article 8



Article 9



Article 10

Mission related expenses will be reimbursed by the Requesting State including damages to equipment

EMAC reimbursement is NOT contingent upon a federal disaster declaration
Expenses must be eligible/documented

The EMAC Process



PRE-EVENT PREPARATION



ACTIVATION



REQUEST & OFFER



RESPONSE



REIMBURSEMENT

5 Phases of the EMAC Process



The EMAC Process



PRE-EVENT PREPARATION



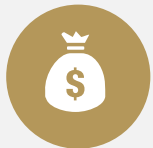
ACTIVATION



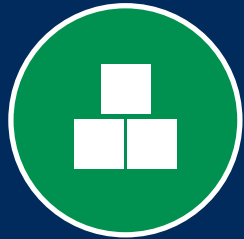
REQUEST & OFFER



RESPONSE



REIMBURSEMENT



- Develop plans & procedures
- Implement lessons learned/improvements
- Plan
- Train
- Exercise
- Develop & Catalog Mission Ready Packages in the Mutual Aid Support System

Phase 2: Activation



PRE-EVENT PREPARATION



ACTIVATION



REQUEST & OFFER

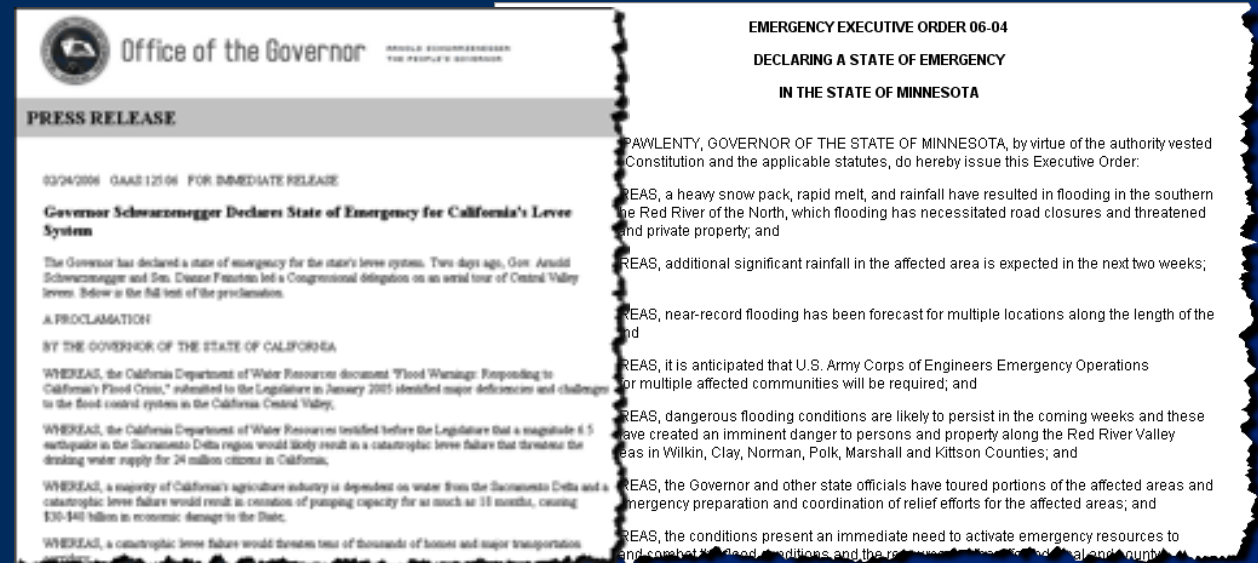


RESPONSE

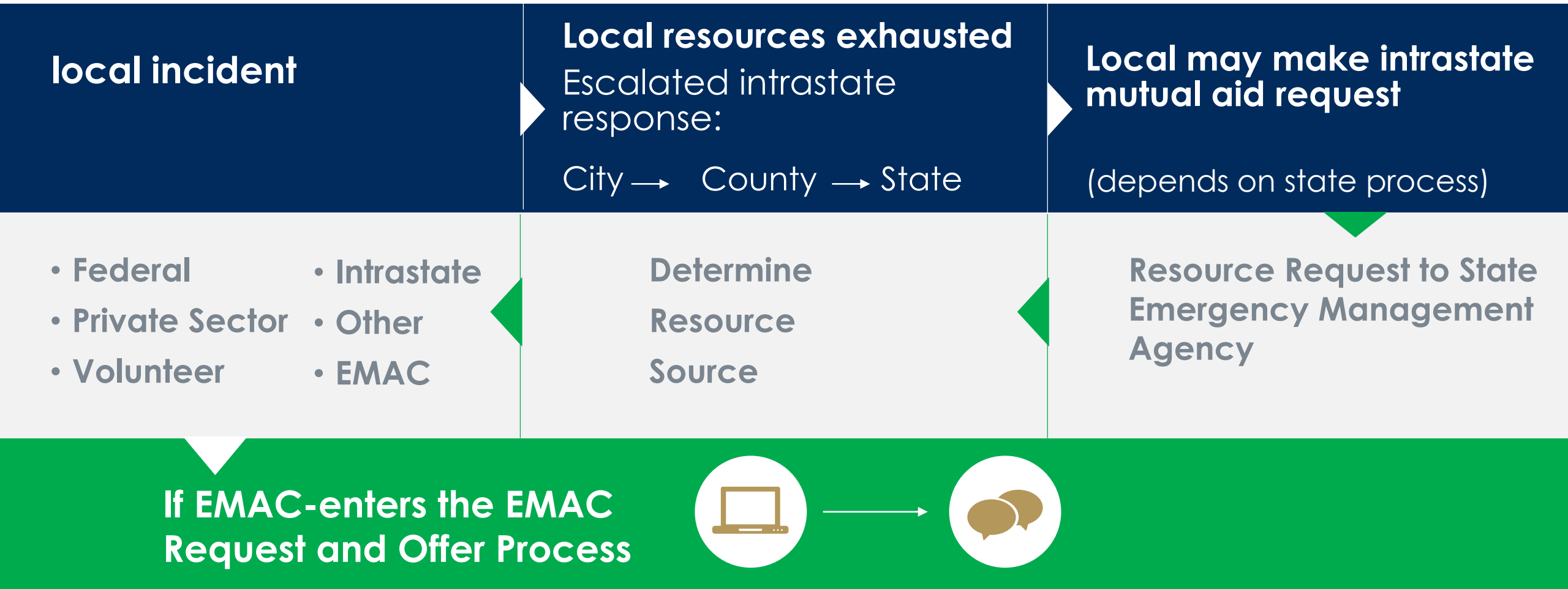


REIMBURSEMENT

Governor declares state of emergency or disaster



EMAC Follows the Emergency Management Processes



Phase 3: Request and Offer



PRE-EVENT PREPARATION



ACTIVATION



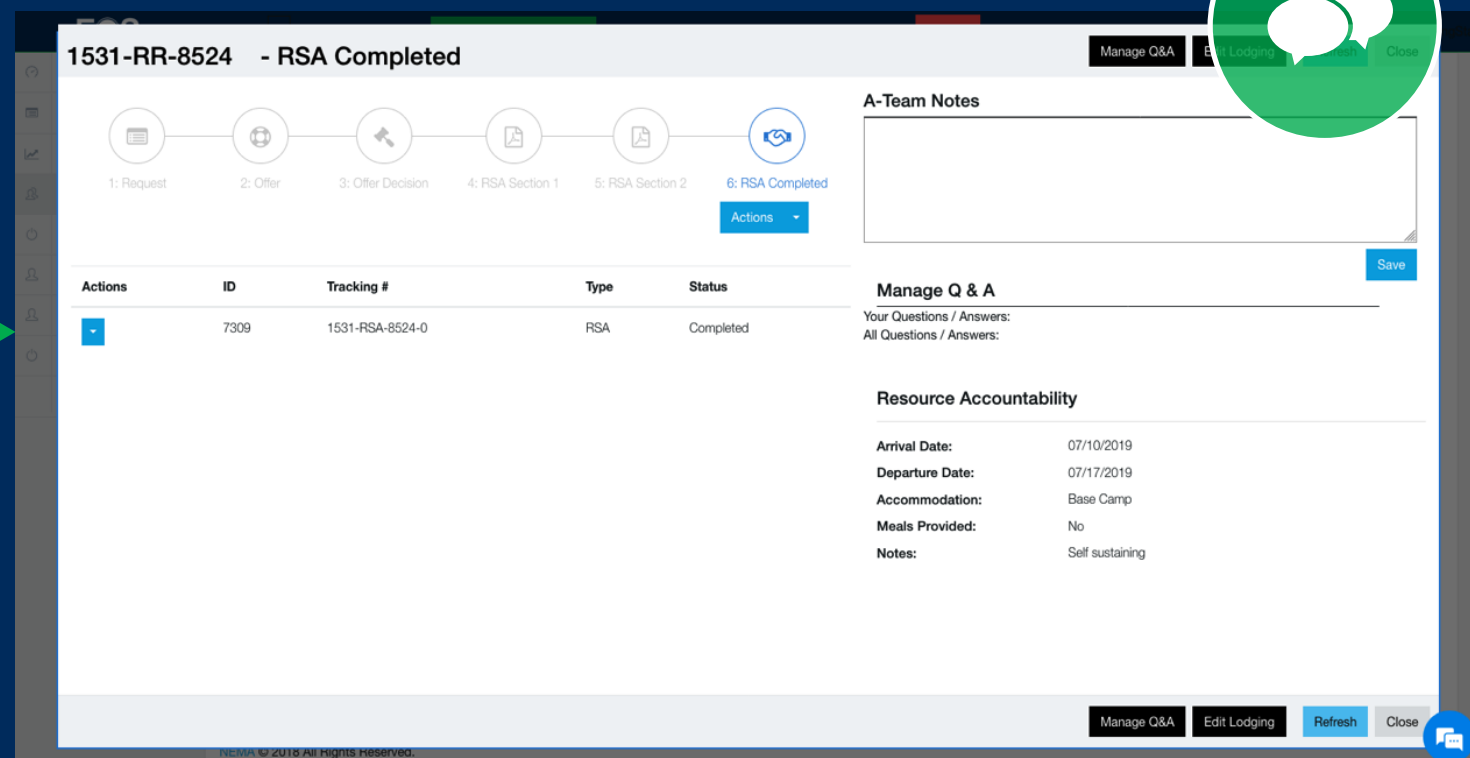
REQUEST & OFFER



RESPONSE



REIMBURSEMENT




1531-RR-8524 - RSA Completed

Manage Q&A Edit Lodging Refresh Close

1: Request 2: Offer 3: Offer Decision 4: RSA Section 1 5: RSA Section 2 6: RSA Completed

Actions

Actions	ID	Tracking #	Type	Status
	7309	1531-RSA-8524-0	RSA	Completed

A-Team Notes

Save

Manage Q & A

Your Questions / Answers:
All Questions / Answers:

Resource Accountability

Arrival Date: 07/10/2019
Departure Date: 07/17/2019
Accommodation: Base Camp
Meals Provided: No
Notes: Self sustaining

Manage Q&A Edit Lodging Refresh Close

EMAC © 2018 All Rights Reserved.

Phase 3: Request and Offer



PRE-EVENT PREPARATION



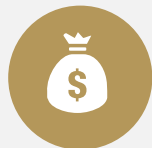
ACTIVATION



REQUEST & OFFER



RESPONSE



REIMBURSEMENT

Mobilization Stage

Personnel prepare to leave Assisting State and go to Requesting State to provide support



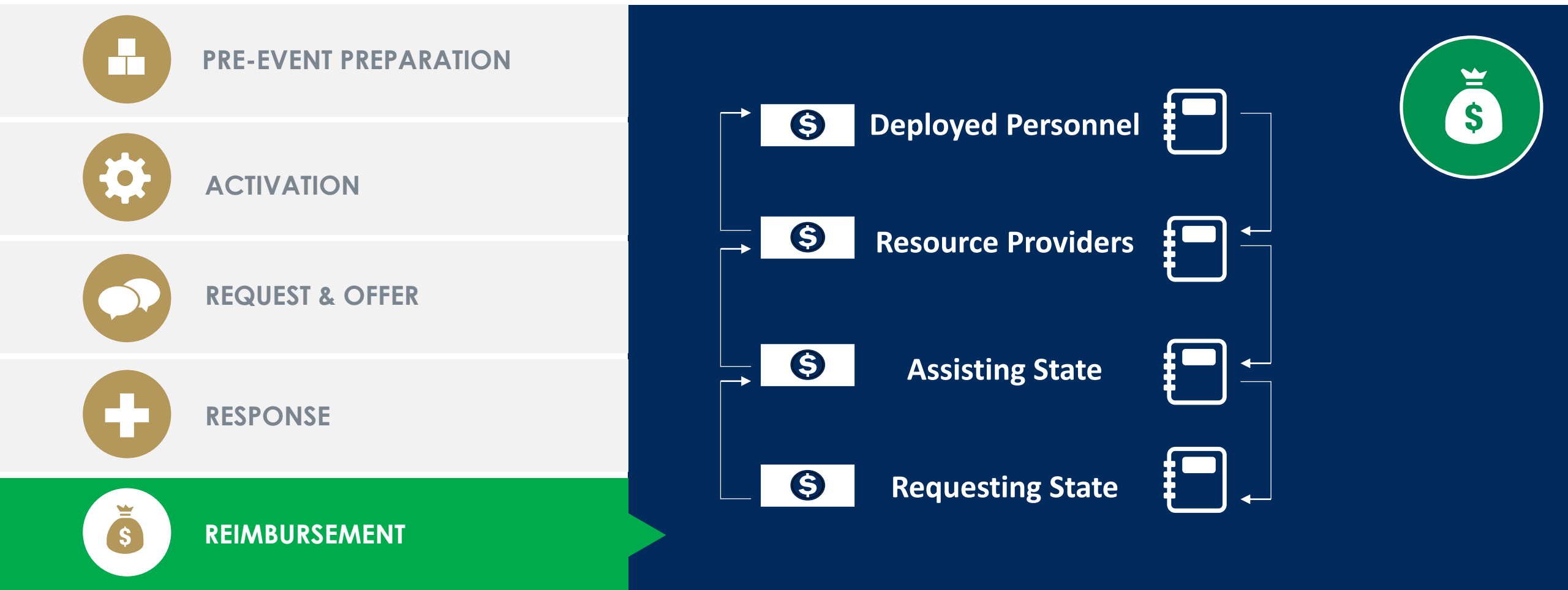
Deployment Stage

Perform mission or render services in Requesting State

Demobilization Stage

Mission or services completed and deployed personnel prepare to return to Assisting State (home state)

Phase 5: Reimbursement Process



Gregory Sunshine, JD

Public Health Analyst
Public Health Law Program
Center for State, Tribal, Local, and
Territorial Support
Centers for Disease Control and
Prevention



Emergency Management Assistance Compact Deployments and Considerations for State Law

Gregory Sunshine, JD
Public Health Analyst
Public Health Law Program

October 17, 2019



CDC's Public Health Law Program

- **What we do**

- Advance the use of law as a public health tool

- **How we do it**

- Legal epidemiology
- Training and workforce development
- Partnership and outreach

- **Who we serve**

- CDC programs and state, tribal, local, and territorial communities
- You!



CDC–PHLP Disclaimer

The contents of this presentation have not been formally disseminated by the Centers for Disease Control and Prevention (CDC) and should not be construed to represent any agency determination or policy.

These materials are for instructional use only and are not intended as a substitute for professional legal or other advice.

Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.



The Emergency Management Assistance Compact

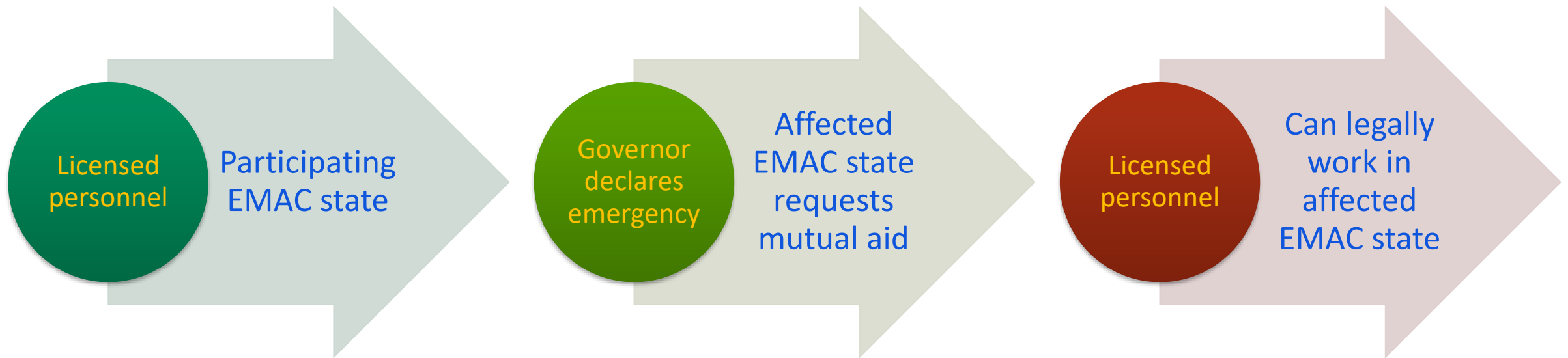
The Emergency Management Assistance Compact (EMAC)

- **Congressionally ratified compact**
- **Provides form and structure to interstate mutual aid**
- **Every state has a ratified and incorporated EMAC into state law**
- **Includes authority to deploy state personnel:**
 - “Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, ...duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services.”

The Emergency Management Assistance Compact (EMAC)

- **EMAC provides:**
 - Licensure reciprocity
 - Relief from civil liability
 - Workers' compensation protections

EMAC's Licensure Reciprocity



Liability Protections Under EMAC

- “Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes.
- No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith.
- Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.”

EMAC Workers Compensation Coverage

- **“Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.”**

State deeming authority

State deeming authority

- Allows a state to “deem” nongovernmental personnel to be treated as governmental personnel for specific purposes
- Mechanism for expanding state benefits to nongovernmental personnel
 - Licensure reciprocity
 - Sovereign immunity and other liability protections
 - Workers compensation coverage
- Statutes can provide these powers and place conditions on when and how they can be used

State law example: Cal. Gov. Code § 179.7

§ 179.7. Indemnification and defense

- (b) Local government or special district personnel who are officially deployed under the provisions of the Emergency Management Assistance Compact pursuant to an assignment of the Office of Emergency Services shall be defended by the Attorney General or other legal counsel provided by the state, and shall be indemnified subject to the same conditions and limitations applicable to state employees.

State law example: 37-B Maine Rev. Stat. § 784-A

§ 784-A. Right to call for and employ assistance

- “The Maine Emergency Management Agency and local organizations for emergency management may employ any person considered necessary to assist with emergency management activities”
- “Any person called and employed for assistance either within Maine or in another state... or in a Canadian province... is deemed to be an employee of the State for purposes of immunity from liability... and workers' compensation insurance”
- “A person holding a professional license in the State may be designated a member of the emergency management forces in that professional capacity only after the individual or the license issuer provides confirmation of a valid license.”

State law example: Arizona Stat. § 26–404

§ 26–404. Deployment of private sector workers to affected states; liability protection; definition

- “A. Pursuant to [EMAC], the governor ...may deploy those officers, employees and members of a private entity or a registered and credentialed volunteer organization in this state who have volunteered to provide assistance to an affected state experiencing any emergency or disaster that is duly declared by the governor of the affected state.
- B. Those officers, employees and members...:
 - 1. Are deemed emergency workers pursuant to § 26-314 when rendering aid to an affected state.
 - 2. Are considered agents of the requesting state for tort liability and immunity purposes pursuant to article VI of [EMAC].
 - 3. Are not liable for any act or omission in good faith while so engaged or on account of maintaining or using any equipment or supplies in connection with an emergency pursuant to article VI of the emergency management assistance compact authorized by § 26-402.




Conclusions

- EMAC provides a uniform statutory system for states to deploy personnel
- EMAC deployments provide personnel with licensure reciprocity, liability protections, and workers compensation
- EMAC deployment of non-state employees rests on the states ability to deem individuals state personnel

Public Health Emergency Law Online Training

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

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

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



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

Contact:
Gregory Sunshine, JD
Public Health Analyst
Public Health Law Program
gsunshine@cdc.gov

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

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



Holly Welch, JD

Administrative Officer
Preparedness Ohio Emergency
Management Agency





OHIO EMA AND EMAC...OUR BIGGEST EVENT WAS THE 2016 RNC

Final tally: Just 24 convention-related arrests in Cleveland

Jason Noble, USA TODAY NETWORK Published 3:13 p.m. ET July 22, 2016 | Updated 3:22 p.m. ET July 22, 2016



(Photo: Trevor Hughes/USA TODAY)

- CONNECT
- TWEET
- LINKEDIN
- COMMENT
- EMAIL
- MORE

CLEVELAND – City and law enforcement officials here celebrated a safe and smooth Republican National Convention on Friday, defying predictions of chaotic and perhaps violent protests amid Donald Trump's presidential nomination.

Share your **feedback** to help improve our site experience!

The Cleveland mayor and police chief reported just 24 arrests over the past week related to the convention, **which all but shut down** the city's central business district and attracted thousands of delegates, media, demonstrators and others from across the country and around the world.

Cleveland cops getting more hugs than hostility

"We were accused of not being prepared, but I think the proof is in the pudding," Mayor Frank Jackson said.

Cleveland was aided in the security effort by 2,800 officers from hundreds of law enforcement agencies, including those from across the Midwest and as far away as New Jersey and California. The Fort Worth, Texas, Police Mounted Patrol brought eight officers – with their horses and cowboy hats – to lend a hand.





THOUGHTS FOR HEALTH CARE PROFESSIONALS IN EMAC

- Licenses transfer but what does your license mean in each state? Emergency management professionals need healthcare professionals help in crafting requests and fulfilling requests.
- Credentialing.
- Before you deploy: vaccinations, health records, and health risks of the conditions you may be deploying to.



SENDING EQUIPMENT UNDER EMAC

Cost

- Individual to accompany Equipment
- Daily Usage Fee
- Total Cost of Equipment for replacement purposes

Issues

- Logistics of Movement
- Storage/Security of Equipment
- Damage Assessment (before and after deployment)



OTHER EMAC CONSIDERATIONS

- **Train and Exercise often!**
- **Prepare a Mission Ready Package (MRP).**
- **Think about logistics of movement in advance and consider an advanced team.**
- **GIS and situational awareness.**
- **Documentation for reimbursement.**
- **Workers Compensation – talk to your HR in advance.**
- **Stay in-contact and give feedback.**

Questions?



Ebola and Beyond: Legal Preparedness for Outbreaks

- November 21, 2019
- 2:00 pm – 3:30 pm ET

Information Sharing 101: Protecting Public Health Data

- December 12, 2019
- 2:00 pm – 3:30 pm ET

Register at:

<http://www.nga.org/ph-emergency-prep-toolkit/#webinar>



**Upcoming
Webinars in
the Series**