Legal Issues in Hurricanes and Other Disasters

38th Annual NC Health Directors’ Legal Conference

April 17, 2019
No One Is Immune From Disasters!
State of North Carolina
Cross-Sectional Display of Counties Impacted by Hurricane Matthew, Hurricane Florence, and TS Michael

Total Counties Under Presidential Disaster Declaration:
- Hurricane Matthew: 50
- Hurricane Florence: 52
- Tropical Storm Michael: 21

75 of 100 Counties impacted between 2016-2018

Source: NC Division of Emergency Management
Long-Term Recovery is Challenging

- Fiscal Drain
- Staff Capacity
- Multiple Funding Sources
- Public Expectations

Expect Delays
EMERGENCY SHELTER ISSUES
Trigger Events

• Evacuations – impacts on receiving areas
• Hurricanes
• Flash flooding
• Wildfires
• Mudslides & rockslides
• Sustained power outages in severe weather
• Others?

Do You Have A Plan?
Have You Exercised the Plan?
Little Guidance in Statutes

- Sheltering included in definition of emergency management for state, county/city, and non-profit emergency services
  
  GS 166A-19.3(8), 166A-19.13(b)(2), 1-539.11(1a)

- Rules may be waived for adult care homes, hospitals, and health care facilities when such facilities are used as emergency shelters
  
  GS § 131D-7, 131E-84, 131E-112
What Protocols Do You Use?
Liability

- Broad protection for emergency management functions (but, must be a *legitimate* EM function)
- Broad protection for emergency management workers
- Also protects volunteers if working under direction or control of government officials
- Does not protect against gross negligence, willful, wonton, or intentional acts

GS 166A-19.60
Shelter Challenges

A registered sex offender shows up at your emergency shelter at a high school.

What do you do?
Shelter Challenges

A shelter occupant becomes disruptive. You discover the occupant is in possession of and using illegal drugs.

What do you do?
Shelter Challenges

A reporter (hearing about sex offenders and drugs at your shelter) asks for all shelter occupant registration lists and intake forms.

What do you do?
Lessons Learned From Emergency Managers

- CRES training ([NC Coastal Region Evacuation and Sheltering Standard Operating Guide](#))
- Special needs population shelter and transport
- Specialty health care staff (ex: administering medications and oxygen)
- Special shelter situations (hospitals, nursing homes, jails)

- Mass evacuations (impacts on receiving jurisdictions)
- Coordinating special needs registry
- Resources (food, supplies, staff, generators)
- Lack of local evacuation/sheltering plan
- Not exercising plans
- Public communications

Communications!
MAXIMIZING FISCAL RECOVERY
Recovery Funding

Other Federal Sources
- Disaster grants
- Non-disaster grants
- Existing grant awards

FEMA
State DRA
CDBG-DR

Insurance
Philanthropic
Financing

Recovery
Most Common Reimbursement Pitfall

Noncompliance with federal procurement requirements most common reason for FEMA PA reimbursement denial

DHS OIG found over $500 million in questionable PA reimbursement due to procurement violations (2008-2016)*

Procurement Rules

Requirements apply to ALL categories of PA permanent work (CDBG-DR rules similar)

Follow the “Most Restrictive Rule”
SOG Emergency Management Website

www.sog.unc.edu/ncem
SOG Purchasing Website

www.ncpurchasing.unc.edu
NC Division of Emergency Management

www.ncdps.gov/Our-Organization/Emergency-Management/
Good Luck!

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