

Explanation of Public Health Mutual Aid Agreement

Every day, Boards of Health and Health Departments effectively protect Massachusetts communities from infectious disease and environmental hazards through a variety of preventive measures. However, an event that threatens public health could overwhelm the public health resources of a municipality in the Commonwealth, even if the event does not constitute a declared emergency. An infectious disease outbreak for example, may require immediate action to prevent the development of a major epidemic. Additional public health expertise and personnel can be critical to addressing and controlling an event.

To enhance emergency preparedness and response capabilities, the Massachusetts Department of Public Health (MDPH) recommends that Boards of Health and Health Departments enter into mutual aid agreements with cities and towns within their Emergency Preparedness Regions and with other neighboring communities if appropriate. Only by sharing resources, expertise and equipment across borders will local health authorities be able to respond effectively to situations that can threaten public health and interrupt critical services.

This mutual aid agreement has been drafted by a team including an MDPH attorney, municipal attorneys, MDPH emergency preparedness staff, and staff from the Cambridge Public Health Department Advanced Practice Center for Emergency Preparedness. The information that follows is provided to assist your understanding of the issues involved with mutual aid agreements and their relevance to municipal concerns. Please share this information with your city solicitor or town counsel as they review the document. You may also contact your Regional Coordinator for more information and assistance regarding this mutual aid agreement.

The following is a section-by-section explanation of the **Mutual Aid Agreement among Public Health Agencies**.

Section 1: Purpose

The Agreement is intended for use when “the resources normally available to any municipality are not sufficient to cope with a situation which requires [public health] action.” The quoted language, modified for public health, is taken from M.G.L. c. 40, § 8G (allowing mutual aid agreements among police departments). The Agreement is intended to cover situations where local resources are insufficient to meet an unusual need, which may or may not rise to the level of a declared emergency. However, the Agreement is not intended to substitute for the ordinary public health activities of any city or town.

Section 2: Authority

This section cites the section of the Massachusetts General Laws allowing for mutual aid agreements among local health authorities.

Section 3: Definitions

Defines terms used in the Agreement.

Section 4: Other Agreements

This section provides that this Agreement does not restrict the city or town's ability to enter into other mutual aid or intermunicipal agreements, either with the same jurisdictions or others.

Section 5: Requests for Assistance

This section sets out the process for receiving or sending mutual aid. Each city or town must designate an authorized representative to be the point of contact for activating the agreement. In its request for assistance, a Receiving Agency may choose to specify that staff from the Sending Agency will not engage in regulatory enforcement activities.

Section 6: Limitations

This section indicates that the provision of mutual aid is voluntary. It is always the choice of the Sending Agency to determine whether to send aid requested by a Receiving Agency.

To provide maximum flexibility, the agreement provides that staff from the Sending Agency have all powers and rights as personnel in the Receiving Agency, including regulatory enforcement authority, unless otherwise provided in the Receiving Agency's request for assistance. (See Section 8).

Section 7: Supervision and Control

This section explains that personnel who are sent to another city or town remain affiliated with the Sending Agency for purposes of the Massachusetts Tort Claims Act (explained below) and for employment benefits (wages, etc.). However, they may operate under an incident command system in the Receiving Agency.

Section 8: Powers and Rights

This paragraph establishes that personnel of the Sending Agency will be provided the same authority as like personnel in the Receiving Agency. Note that a Receiving Agency may specify limitations on services to be provided by Sending Agency staff under Section 6.

Section 9: Liability

The Massachusetts Tort Claims Act protects government employees from personal liability if they commit a negligent act (or omission) within the scope of their employment, and specifies that the governmental employer is liable. This section explains that each agency, Sending or Receiving, remains responsible under the Tort Claims Act for the negligent acts or omissions of its own employees that occur in the context of mutual aid.

In some situations the government may be immune from liability for the acts of its employees, and this section makes clear that this immunity is preserved. Furthermore, this section provides that no third person (for example, a member of the public) can win a lawsuit claiming that he or she was harmed by something that was done or not done under the Agreement.

Section 10: Workers Compensation

This section explains that a person who is sent to another municipality under the Agreement remains an employee of the Sending Agency and is therefore covered by the Sending Agency's workers' compensation provisions.

Section 11: Reimbursement

This section provides that the Sending Agency does not have to charge, and the Receiving Agency does not have to pay, for mutual aid. However, the parties may agree instead to develop a reimbursement for services process among themselves. Either agency may apply for any type of state or federal assistance that may be available for the incident in which mutual aid was provided.

The record-keeping provisions are required by the intermunicipal agreement statute, M.G.L. c. 40, § 4A.

Although M.G.L. c. 40, § 4A. mentions "provisions for officers responsible for the agreement to give appropriate performance bonds," the drafters of this agreement believe that performance bonds are not necessary or required for the types of mutual aid contemplated under this agreement, and have therefore not included bond provisions.

Section 12: Implementation

Local charters, ordinances, or bylaws may prescribe requirements for the signing of agreements with other municipalities. This section makes the Agreement operative once it is authorized by at least two (2) municipalities. Other municipalities may join at later times.

Section 13: Term of Agreement

M.G.L. c. 40, § 4A restricts intermunicipal agreements to a term of 25 years. This section allows extension of the Agreement after 25 years. Parties may withdraw from the agreement by providing fourteen (14) days' prior written notice to the other parties.

Section 14: Severability

In case a court strikes down one or more provisions of the Agreement, the others remain in effect.

Signature Blocks

Check your local charter, ordinances, or bylaws for signature requirements. Local laws may require a different form of approval than what is given here, so you may need to make appropriate changes. We strongly advise that your city or town attorney review the Agreement.