

Behavioral Health is Essential To Health



Prevention Works



Treatment is Effective



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Promising Practices in Disaster Behavioral Health (DBH) Planning: Legal and Regulatory Authority

August 18, 2011

Presented by Terri Spear, Amy Mack, and
Andrew Klatter



Welcome Remarks

Speaker

Terri Spear, Ed.M.

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Welcome

- This is the seventh webinar in the series of nine webinars presented by SAMHSA.
- The program is intended for State and Territory DBH Coordinators and others involved with disaster planning, response, and recovery.
- Today's program is about 60 minutes in length.

Speaker

Amy R. Mack, Psy.D.

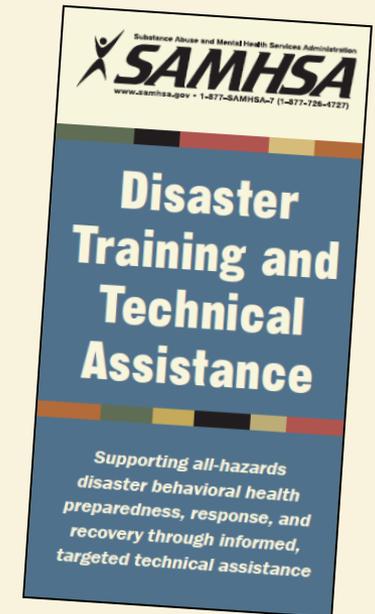
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About SAMHSA DTAC

Established by SAMHSA, DTAC supports SAMHSA's efforts to prepare States, Territories, and Tribes to deliver an effective behavioral health (mental health and substance abuse) response to disasters.



SAMHSA DTAC Services Include...

- ***Consultation and trainings*** on DBH topics including disaster preparedness and response, acute interventions, promising practices, and special populations
- ***Dedicated training and technical assistance*** for DBH response grants such as the Federal Emergency Management Agency Crisis Counseling Assistance and Training Program
- ***Identification and promotion of promising practices*** in disaster preparedness and planning, as well as integration of DBH into the emergency management and public health fields

SAMHSA DTAC Resources Include...

- The Disaster Behavioral Health Information Series, or DBHIS, which contains themed resources and toolkits on these topics:
 - DBH preparedness and response
 - Specific disasters
 - Specific populations

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SAMHSA DTAC Resources

In addition to the SAMHSA DTAC Resource Collection library, SAMHSA DTAC maintains four additional resources useful to the field of disaster behavioral health.

- [SAMHSA Disaster Behavioral Health Information Series](#)
- [The Dialogue](#)
- [DTAC Bulletin](#)
- [SAMHSA DTAC Discussion Board](#)
- [SAMHSA Disaster Kit](#)

SAMHSA Disaster Behavioral Health Information Series (DBHIS)

The SAMHSA DBHIS contains themed resource collections and toolkits that are pertinent to the disaster behavioral health field. All resources for which links are provided are in the public domain or have been authorized for noncommercial use. Hardcopies of some materials may be ordered by using the publication numbers cited in bibliographies. If utilized in program materials, stakeholders should acknowledge the source of the materials.

SAMHSA DBHIS Resource Collections

- [Children and Youth](#)
- [Deployed Military Personnel and Their Families](#)
- [Disaster-Specific Resources \(New!\)](#)
- [Federal Resource Collection on Disaster Behavioral Health](#)
- [Immediate Disaster Response: Deepwater Horizon Oil Spill](#)
 - [Archives: Multi](#)
- [Languages Other Than English \(New!\)](#)
- [Older Adults](#)
- [Pandemic Influenza](#)
- [Persons with Functional and Access Needs \(New!\)](#)
- [Public Safety Workers](#)

DTAC Quick Links

- » [DTAC Home](#)
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- » [DTAC Resources](#)

Featured Resource

Tips for Dealing With the Gulf Oil Spill: tips for professionals, the general public and emergency response workers in dealing with the Gulf Oil Spill available in English, French, Italian, Spanish

SAMHSA DTAC E-Communications

- SAMHSA *DTAC Bulletin*, a monthly newsletter of resources and events. To subscribe, email DTAC@samhsa.hhs.gov.
- *The Dialogue*, a quarterly journal of articles written by DBH professionals in the field. To subscribe, visit <http://www.samhsa.gov>, enter your email address in the “Mailing List” box on the right, and select the box for “SAMHSA’s Disaster Technical Assistance newsletter, The Dialogue.”
- SAMHSA DTAC Discussion Board, a place to post resources and ask questions of the field. To subscribe, register at <http://dtac-discussion.samhsa.gov/register.aspx>.

Contact SAMHSA DTAC

For training and technical assistance inquiries, please access the following resources:

- Toll-free phone: 1-800-308-3515
- Email: DTAC@samhsa.hhs.gov
- Website: <http://www.samhsa.gov/dtac>

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Speaker

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Indicators of Legal and Regulatory Authority

Citation of legal authorities and reference documents

- Process for developing a memorandum of understanding (MOU) and mutual aid agreement (MAA)
- Citation of liabilities
- Liabilities of insurance
- Informed consent requirements/consideration when applicable

Learning Objectives

- Discuss elements of legal and regulatory authority at the Federal/State/Territory/Tribe and local levels
- Discuss the elements of developing a MOU and MAA
- Discuss issues of responders' liabilities, informed consent, and confidentiality

Legal and Regulatory Authority at the Federal Level of Authority

- The following are the basis for Federal legal authority for the development of the comprehensive emergency management plan (CEMP):
 - Stafford Act, Homeland Security Act of 2002, Public Health and Security and Bioterrorism Preparedness Act
 - Presidential directives
 - National Response Framework, including all Emergency Support Functions (ESFs)

Legal and Regulatory Authority at the State Level

- State statutes, Emergency Management Assistance Compact
- Governors' executive orders that clarify the duties of State agencies for all matters relating to emergency management, including identification of State authorities for behavioral health
- The State's CEMP

Legal and Regulatory Authority at the Local Levels

- Local emergency management ordinances – usually an extension of the State statute
- Local CEMPs
 - Multidiscipline, with all ESFs addressed including ESF #8, Public Health, which includes behavioral health

DBH Plan

- The legal regulatory authority should be clearly defined in the plan:
 - Under what authority are you developing this plan?
 - Who is the lead agency of ESF #8? Are you working with that entity?
 - Is this plan being written as a policy for your agency and is it being reviewed internally?

Indiana DBH Plan

- Legal reference: Disaster behavioral health is mentioned in Indiana code as a responder.
- Policy: Our Policy Development Committee reviewed our State plan for comments and revision, with the Director signing off.
 - Clearly defines who can respond
 - Clearly defines the Incident Command System
 - Includes procedures embedded in the plan to clearly set how and when the DBH teams will respond

Indiana State and Federal Statutes and Regulations

- Indiana Code Title 10-14-3, Emergency Management and Disaster Law
- Indiana Code Title 10-14-5, Emergency Management Assistance Compact
- Indiana Code Title 10-14-3-19, Respond to a disaster, public health emergency, public safety emergency, or other event that requires emergency action, a mobile support unit (Note: New code site)
- Executive Order 05-34 and 05-09
- State of Indiana CEMP

Indiana State and Federal Statutes and Regulations (continued)

- Homeland Security Presidential directives
- Emergency Management Accreditation Program
- National Incident Management System (NIMS)
- 42 United States Code (U.S.C.) 5121 et seq., referred to as the Robert T. Stafford Disaster Relief and Emergency Assistance Act
- 42 U.S.C. 11001 et seq., Emergency Planning Community Right-to-Know Act. Public Law 99-499 Superfund Amendment and Reauthorization Act of 1986, Title III

Indiana State and Federal Statutes and Regulations (continued)

- Code of Federal Regulations Title 44, Part 205 and 205.16
- Code of Federal Regulations Title 42, Part 2, Confidentiality Requirements

DBH Plan—Liability

- Liabilities may be addressed in statute, which you should consult (Good Samaritan law may apply).
- Liability can be mitigated by the following:
 - Clear definition of roles of responders
 - Understanding of the workers' compensation laws in the event of an accident during deployment
 - Description (before disaster) of responsibilities of responders
 - Training, training, training, including open discussion of the risk of response
 - Incident Command System

DBH Plan—Liability (continued)

- Liability can also be mitigated by the following:
 - DBH teams as an asset of the State and working under the State’s liability law
 - DBH plan includes (or does not include) the following features:
 - Clear and concise supervision and team management plan
 - Clear and concise policies and procedures for response including a vigorous application process for responders to go through that includes training, completion of required NIMS courses, medical screening, interviews by team leaders, and orientation to code of conduct and code of ethics
 - No self-deployment working through the Incident Command System

DBH Plan—Use of Policies

- Under State statutes most State agencies are required to develop policies to assist them with the carrying out of their official duties.
- Following are some examples of DBH policies:
 - Development of a DBH committee
 - Establishment of DBH teams
 - Code of conduct, ethics for those who are responding
- DBH policies should clearly spell out clearly the roles and responsibilities of the responders.

DBH Plan—Use of Policies (continued)

- DBH policies should clearly state who, what, and under whose authority the responders will be deployed to a disaster.
- DBH policies should include other agencies with which you will be working.
 - What are their roles?
 - How will you coordinate with them?
 - Have you worked out any agreements prior to the response?

DBH Agreements

- DBH plans should include agreements with other agencies with which you will be working.
 - This should be a formalized agreement.
 - This agreement should be done prior to the disaster.
 - This agreement can be an MOU, MAA, or a memorandum.

DBH Plan – MOU

- An MOU is a document describing a bilateral or multilateral agreement between parties.
 - It expresses a convergence of will between the parties, indicating an intended common line of action.
 - It is often used in cases where parties either do not imply a legal commitment or in situations where the parties cannot create a legally enforceable agreement.

DBH Plan – MAA

- MAAs and assistance agreements are understandings between agencies, organizations, and jurisdictions that provide a mechanism to quickly obtain emergency assistance in the form of personnel, equipment, materials, and other associated services.
 - The primary objective is to facilitate rapid, short-term deployment of emergency support prior to, during, and after an incident.

DBH Plan

MOU Elements

- The **introduction section of the MOU** helps the reader to understand the agreement content. It describes the need, the agencies involved, and why it is necessary to work together.
- The **purpose section** should be a concise statement discussing the intention of the new or proposed capability that makes the MOU necessary.

DBH Plan

MOU Elements (continued)

- The **scope section** lists the agencies and jurisdictions to be included in the agreement and describes their relationship.
- The **definition section** describes the operational and technical terms associated with the capability or resource for which the agreement is written.
 - Providing definitions will help avoid confusion and uncertainty.

DBH Plan

MOU Elements (continued)

- The **policy section** of the MOU briefly describes circumstances under which the capability can be used.
 - This section can also mention authorized use, activation, timing, and other circumstances.
- The **user procedure requirements section** outlines the obligations of this agreement. For an agreement on sharing an enhanced capability, obligations may include training, exercises, and user requirements.

DBH Plan

MOU Elements (continued)

- The **oversight section** describes how agencies or jurisdictions will deploy the new capability. It can also describe how the agencies can provide recommendations that affect policy and whether other agencies accept or reject these recommendations.

DBH Plan

MOU Elements (continued)

- The **responsibility for Standard Operation Procedure (SOP) compliance section** assigns responsibility to agencies to ensure SOPs for the capability are followed.
- The **updates to the MOU section** describes how updates can be made to the MOU. It includes information such as who has the authority to update the MOU, how updates will be made, and how participating agencies will be notified of updates.

DBH Plan

MAA Elements (continued)

- The **purpose section** states that the purpose of this agreement is to establish the terms and conditions by which either party may request aid and assistance from the other party in responding to an emergency or disaster that exceeds the resources available in the requesting party.

DBH Plan

MAA Elements

- **Term of agreement**—Agreement is effective upon the day and date of the last signature affixed. The agreement shall remain in full force and effect until terminated by the parties.

DBH Plan

MAA Elements (continued)

- **Execution of agreement**—The agreement shall be authorized and approved by the governing body of each party to the agreement.
 - Each party shall be responsible for the timely submission, filing, or recording of the agreement and any subsequent amendment or termination thereof with local governmental or regulatory offices.

DBH Plan

MAA Elements (continued)

- **Procedures for requesting mutual aid assistance through an authorized representative**—Assistance may be requested through an authorized representative by submitting a written request, or an oral request followed as soon as practicable by written confirmation, to the other party.

DBH Plan

MAA Elements (continued)

- **Reimbursement**—Unless otherwise agreed upon by recipient and provider, this element includes the terms and conditions governing reimbursement for assistance provided under this agreement.

Legal, Regulatory, or Policy Authorities

- Legal, regulatory, or policy authorities should be clearly stated in the DBH plan.
- Several issues need to be addressed:
 - Liability and confidentiality
 - Implementation of MOU and MAA when working with other organizations or agencies
 - Confirmation that your plan is compliant with the Health Insurance Portability and Accountability Act (HIPAA)—work with your HIPAA compliance officer

Legal Regulatory or Policy Considerations

- Several issues need to be addressed:
 - Addressing of confidentiality
 - Clear and concise supervision and management plan, incident command structure
- Plan should address mandatory reporting requirements (adult protection and child services).
- Plan should include a process for “credentialing” responders.
- The plan should involve disaster reimbursement for providers via State contracting rules.

Emerging Best Practices

- State liability coverage is in State statutes.
- District teams' structure is in State statutes.
- DBH has a seat at the State's emergency operations center, or EOC, which also includes a legal desk.
- DBH is listed as a State asset under the State's homeland security department; this provides a level of authority when deployed by the State.
- State mental health authority provides a legal requirement for background checks for all responders.

Confidentiality and Informed Consent

- Disaster mental health programs do not require that medical records be opened or maintained on the survivors. Currently, we have our teams understand a code of ethics that is in policy.
- Team members are required to maintain confidentiality at all times and to respect survivors.
- Teams are not providing therapy.
- Work with your staff attorney or HIPAA compliance officer to get a better understanding.

Next Steps for Legal and Regulatory Authority

- Contact Homeland Security or your emergency management agency to get a copy of all relevant laws, directives, and policies.
- Contact your legal staff and see what would be the best option (e.g., lobby to get into State statute, work through existing policy development committee).
- Find out who is the lead for ESF #8.
- Survey community and agencies that you are currently working with to see if there is a need to formalize that relationship.

Questions for Mr. Klatte?

Conclusion

- This concludes the Legal and Regulatory Authority webinar, a part of the Promising Practices in DBH Planning series.
- Subsequent sessions will explore each of the standards in greater depth, providing examples, lessons learned, and good stories about how to enhance your DBH plan.

Next Steps

The next webinars include:

- **Integrating Your DBH Plan on August 25, 2011 at 2 p.m. eastern time (ET)** (1 p.m. central time [CT]/12 p.m. mountain time [MT]/11 a.m. Pacific time [PT]) featuring **Mr. Steven Moskowitz**
- **Plan Scalability on August 30, 2011 at 2 p.m. ET** (1 p.m. CT/12 p.m. MT/11 a.m. PT) featuring **Dr. Anthony Speier**

Contact SAMHSA DTAC

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Thank You