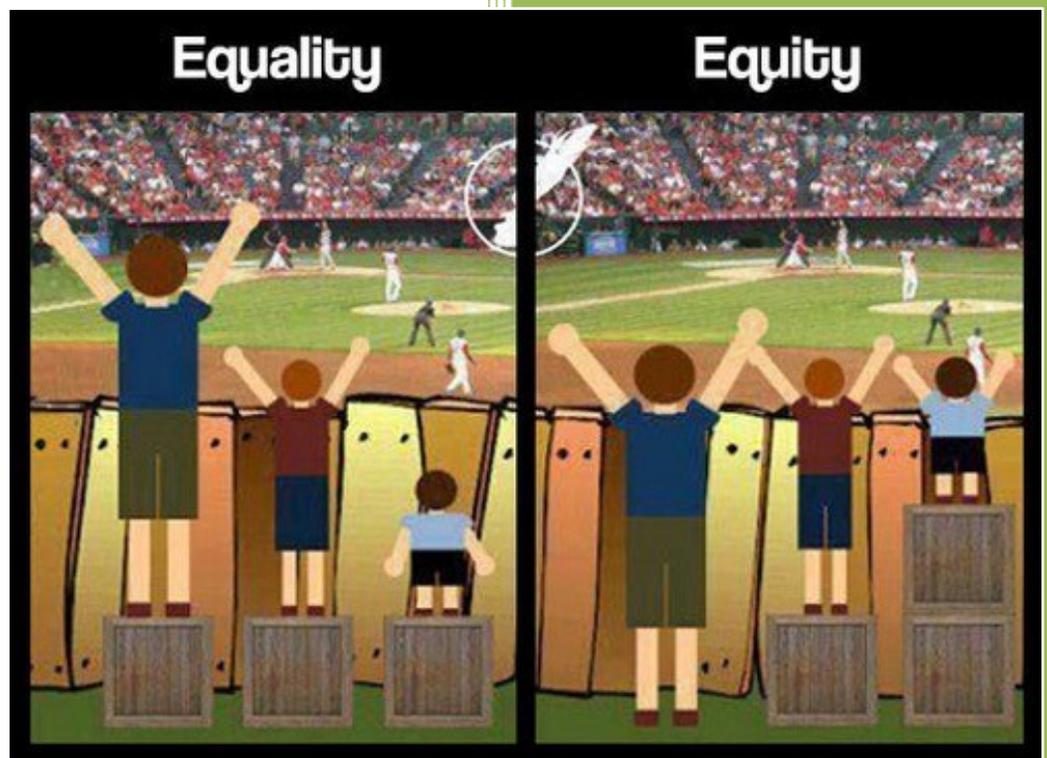


House Memorial 87 Taskforce Committee Report



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House Memorial 87 Report

Executive Summary

One of the memorials passed in the 2014 regular legislative session was House Memorial 87 (HM 87), short-titled **Disability Compliance of Emergency Plan**. Among emerging national concerns of finding emergency management programs in violation of the Americans with Disabilities Act (ADA) and liable for damage, House Memorial 87 requested that the Governor's Commission on Disability (GCD) form a taskforce to ensure that New Mexico's 2014 all hazard emergency operations plan complies with Title II of the ADA and to identify barriers to compliance or deficiencies in the plan.

The taskforce was requested to include representatives from the Homeland Security Emergency Management Department (HSEMD), the Department of Public Safety (DPS), the Vocational Rehabilitation Division (DVR) of the Public Education Department (PED), the Bureau of Health Emergency Management (BHEM) of the Department of Health (DOH), the Aging and Long-Term Services Department (ALTSD), Indian Affairs Department (IAD), the Governor's Commission on Disability (GCD), the Developmental Disabilities Planning Council (DDPC), the Commission for Deaf and Hard-of-Hearing (CDHHP), the Commission for the Blind, the Public Regulation Commission (PRC), the state fire marshal, the Office of the State Engineer, at least two rural counties and one class A county, and at least two tribes or pueblos.

Over the last few months, representatives from the GCD, DHSEM, DOH Health Emergency Management, DPS, GSD Risk Management Division, the DDPC, and a disability consumer advocate met to begin preliminary work. The work group learned that the All Hazard Emergency Operations Plan (EOP) is a broad, overarching (sometimes referred to as 10,000-50,000 foot level) operations plan, detailing how various state and local governmental entities communicate and operate together in the event of emergency. The work group was advised that the EOP was not the appropriate vehicle to ensure ADA compliance of all emergency management and response. The details about how communication occurs with citizens (including those with disabilities) in emergency situations, and how they are evacuated, transported or housed during emergencies are left to the local emergency operations jurisdictions. While it could be argued that the responsibility of ADA compliance lies simply with local jurisdictions, only the State has the position to ensure consistency of application for all New Mexicans and reduce risk, liability, and consequent insurance rates through preemptive action.

The Taskforce makes the following recommendations:

1. The Taskforce recommends that the EOP be revised to include clear and explicit language regarding compliance. The recommendation is to include an additional planning assumption that states, *“It is assumed that the implementation of any and all emergency plans by DHSEM and/or any affiliated government agencies will be in compliance with Title II of the Americans with Disabilities Act.”*
2. The Taskforce recommends incorporating an accessible (to those with sensory impairments) statewide emergency mass notification system into the EOP and emergency management. A funded position within DHSEM is also necessary in order to adequately manage and utilize the mass notification system.
3. It is highly recommended that DHSEM, as the primary state agency, be given the regulatory authority through state law, as well as the appropriate number of funded positions, to provide an increased level of oversight for ADA compliance of all local jurisdictional emergency plans and to expand their repository to include the most current emergency plans of all jurisdictions.

In addition to the formal recommendations, this Taskforce addresses and recommends a potential vehicle to achieve what the Taskforce perceives as the motivating intent and spirit behind HM 87. Specifically recommended is a mechanism to ensure that all emergency plans in New Mexico comply with the ADA and that inclusion of the needs of people with disabilities are incorporated into emergency management and response. While these elements are not directly related to the ADA compliance of the State EOP, the focus of HM 87; they are necessary elements of a response that is appropriate for all people, including people with disabilities, during emergency situations.

These recommendations include:

1. Creation of a Second Taskforce charged with performing a literature review of best practice, guidance, associated litigation, and evidence based documents, identifying common and New Mexico specific barriers through an analysis of emergency management structure and ability (i.e. implementation capacity to make sure emergency management has the ability) with potential solutions. These solutions will be solidified by this future taskforce into a strategy of explicitly how to develop an inclusive and ADA compliant emergency management program statewide and a system to manage and supervise progress as well as a system to ensure the permanency of implementation and oversight of the developed plan.
2. The future taskforce is further charged with developing detailed implementation guidance for emergency plans that speak directly to specific actions providing meaningful access to those with disabilities. A

particular focus should include the areas of: needs assessment, guidance, technical support and training, individual preparedness, and the description and funding of a permanent position, within the structure of emergency management, to solidify the ADA compliance implementation once the taskforce concludes.

It is in the best interest of the State of New Mexico to take a proactive, thoughtful, and engaged approach to planning for and including people with disabilities in emergency management and response on a voluntary basis before actions become mandated; as recent events in Los Angeles and New York City demonstrate, discussed under *Recent Litigation*. There exist considerable liabilities in the areas of risk management, public relations, and resultant variables, which include the potential for serious financial repercussions. Forming the suggested taskforce would be a proactive measure that would help the actual safe evacuation of people with disabilities during times of emergency. This measure would also help abate any public outcry that could arise should the State not take these measures, and the needs of people with disabilities were not met during times of emergency.

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Introduction

Planning for, and responding to, emergencies and disasters are vital and demanding assignments for any state. Every emergency is different, to some level unpredictable, and can take many forms; the array and detail of planning necessary for every imaginable kind of hazard is tremendous. Personnel and equipment resources are often universally insufficient to the demand and become depleted quickly. No level of planning, coordination and collaboration can completely ensure a seamless execution and the prevention and removal of all human suffering. Moreover, any government is restricted by the decisions and preparedness of individual citizens, community groups, and the private sector.

New Mexico has particular vulnerabilities that add additional levels of complexity to an already herculean task. According to the 2012 Behavioral Risk Factor Surveillance System, approximately 23.3% of New Mexico’s population has a disability. While the majority of citizens live in three metropolitan areas: Albuquerque, Las Cruces, and Santa Fe, the large land mass and isolated populations outside of these areas “creates a challenge in providing resources capable of equal protection and statewide response.” (2014 draft of State Emergency Operations Plan) The Department of Homeland Security and Emergency Management (DHSEM) have identified fourteen natural hazards, seven human-caused hazards, and four public health hazards: dam failure, drought, earthquakes, expansive soils, extreme heat, floods, high winds, land subsidence, landslides, thunderstorms, tornadoes, volcanoes, wildfires, winter storms; biological, chemical, cyber-terrorism, explosive, hazardous materials, nuclear, radiological; hantavirus, pandemic influenza, plague, west nile virus.

We do not contest the difficulty of this vast, daunting responsibility and in no way intend this report to disparage the efforts of emergency management in New Mexico. Rather, we recognize that a lack of compliance, whether perceived or real, with the Americans with Disabilities Act is more often due to the inability to obtain and/or the lack of information necessary to redirect already existing resources and methodologies appropriately, a form of benign neglect, than intentional discrimination. With this in mind, the recommendations of this taskforce should be seen only as an initial gap analysis and needs assessment in a no fault environment to improve and prioritize action, with the ultimate goal of improving emergency response for all New Mexicans. The actions necessary to improve will hopefully be addressed in the next proposed phase of the taskforce, discussed under *Other Taskforce Generated Recommendations*.

People with disabilities have distinctive challenges in responding to emergencies. Encountering an often-inaccessible world, many individuals with disabilities are forced to adapt either through additional equipment, advance planning efforts, or clever problem solving skills. A disaster or emergency changes those parameters

and can leave someone without the accommodations they would otherwise have and creates a scenario where they cannot use, safely or comfortably, standard resources intended for individuals without disabilities. Individuals cannot develop an appropriate personal emergency plan without information about accessible emergency services. Thus, it is particularly important to account for the needs of people with disabilities in the preparation and planning phases of emergency management. Additionally, emergency managers need information about the emergency needs of individuals with disabilities in order to adequately plan.

In addition to the human impacts discussed above, there are significant financial and public relations liabilities and dynamics to take into account. Successful lawsuits against the City of Los Angeles and the City of New York (see *Recent Litigation*) mandated comprehensive action to plan for, and include, people with disabilities in emergency management and response action. It is strongly suggested the State of New Mexico take similar action preemptively. As elaborated by the Judge Marshall for United States District Court Central California, “the purpose of the City’s emergency preparedness program is to *anticipate* the needs of its residents in the event of an emergency and to *minimize* the very type of last-minute, individualized requests for assistance described by the City, particularly when the City’s infrastructure may be substantially compromised or strained by an imminent or ongoing emergency or disaster” (Case No. 2:09-cv-00287, February 10, 2011). Put succinctly, since planning existed for individuals without disabilities, but did not exist for those with disabilities, it constituted a violation of the ADA; those without disabilities could take action whereas those with could not.

Emergency Management Structure

All emergencies begin with local response, expand as necessary for additional support, to potentially include state and federal support, and eventually contract back to the point of local recovery: “The concept of operations is in alignment with the National Incident Management System (NIMS) and Incident Command System (ICS) that describe how the state will respond in an emergency. (2008 New Mexico Task Force Report)” More specifically, as required by the National Response Framework (NRF) for an emergency operations system, local jurisdictions have primary responsibility to assist their residents with evacuation and sheltering and they control how response occurs based upon their local emergency operations plan.

The State Emergency Operations Center is a location hosted by the New Mexico Department of Homeland Security and Emergency Management, which may be activated depending on the severity of the emergency in order to provide support and assistance, and through which multiple entities can coordinate response. If local jurisdictions decide that State support is not necessary, they may act autonomously to organize their own response with their own emergency

operations center and are not legally required to notify DHSEM of the event or their actions.

The State EOP (SEOP), produced by the Department of Homeland Security and Emergency Management (DHSEM), is generally a response plan outlining how the State will respond to emergencies and disasters when engaged to assist local jurisdictions. However, the SEOP does not dictate to or oversee how all counties and cities respond. Accordingly, the SEOP is not the appropriate vehicle with which to determine and make recommendations for ADA compliance of all emergency response in New Mexico. The SEOP cannot direct the specific implementation steps to ensure ADA compliance of emergency plans at the local level.

A sidebar worthy of mention is the existence of the Emergency Management Performance Grant (EMPG) from the Federal Emergency Management Agency (FEMA), whose purpose is to sustain and improve comprehensive emergency management programs at the state, tribal and local levels as authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Several local jurisdictions in New Mexico receive EMPG matching funds, routed through DHSEM, who therefore provides some level of oversight. As recipients of federal funding, these local jurisdictions are also more specifically required to be ADA compliant; however, this measure is limited in scope and only applies to the local jurisdictions that receive EMPG funding.

“A centerpiece of current emergency management planning is that ‘all response is local.’ This does not mean that higher units of government including state and federal agencies are irrelevant or do not play major roles in planning mandates as well as responses to future disasters. Rather, it means that those at the local level, whether they are first responders, emergency management agencies, or disability organizations including CILs [Centers for Independent Living], are the first line in our collective ability to successfully plan for and respond to a disaster. Depending on the scope of the disaster, assistance from state and federal agencies will arrive at some point after the disaster. Hurricane Katrina and the storms which followed were an anomaly in their fury and breadth. They revealed serious shortcomings at all levels of the public and non-profit sectors. However, over time, systems that represent the ‘civic fabric’ of our communities will be restored and where necessary, reinvented.” (White, G.W., Fox, M.H., Rooney, C., & Cahill, A; Assessing the Impact of Hurricane Katrina on Persons with Disabilities, 2007)

This Taskforce addresses and recommends later in this report a potential vehicle to achieve what the Taskforce perceives as the motivating intent behind this House Memorial: specifically, a mechanism to ensure that all emergency plans in New Mexico comply with the ADA.

Recent Litigation

The impetus of House Memorial 87 was the conclusion of the class action lawsuit against the City of New York because of their emergency response during Hurricane Sandy in 2012. Comprising 11% of New York City, there were an estimated 889,651 individuals with disabilities affected by Hurricane Sandy and the City estimated that 118,000 individuals with disabilities lived within the mandatory evacuation zones. The other relevant case regarding ADA accommodation in emergency planning occurred in Los Angeles in 2010. The City of Los Angeles' Emergency Management Department had no planning specifically to address disabilities, intending to create ad hoc case-by-case accommodations as the need arose. Typically, emergency response accommodations fall into four broad categories: communication, evacuation, transportation, and sheltering. Within each of these areas, there were significant problems with the ADA compliance of emergency operations.

New York

The City had not determined what shelters and evacuation centers were accessible and therefore could not publicize this information, dissuading people with disabilities from attempting to go to an emergency shelter as, most likely, their needs would not be met. The City encouraged using their 311 system to find information, particularly about accessibility or plans for those with disabilities, but the system could not handle the sheer volume of calls. Wait times went from 18 seconds well before the hurricane to 5.3 minutes just prior, during, and after. Without power to recharge cell phones, many callers most likely could not have waited, if they got through at all. It is unknown just how many people could not get through to an operator.

“Class member Kenneth Martinez, who relied on a motorized wheelchair for mobility and lived in Far Rockaway when Hurricane Sandy struck, testified that he became aware of the impending hurricane on Sunday, October 28, 2012, the day before it was to make landfall. Police officers directed him to an intersection where buses were gathering to transport evacuees. Although there were “four or five buses lined up at the intersection,” Martinez could not get on any of them because they were too crowded for him to board in his wheelchair. A bus driver told him that more buses would be arriving within ten to fifteen minutes. Martinez waited outside for twenty minutes, but no more buses came. He could not stay outside for any longer because it was raining, and he feared that his motorized wheelchair would short out in the rain. The following day, Martinez called 311 in an attempt to get evacuation assistance. He testified that although he began calling at 12:30 p.m., he could not get through until 4:00 p.m. The 311 operator informed Martinez that he would be put “on a list,” but that he would “have to wait.” Nobody ever came to assist him. That evening, floodwater began to fill Martinez’s first-floor apartment, and Martinez was scared that he “was going to drown.” With

the water “so high” that his “head was almost to the ceiling,” Martinez began “banging on the ceiling, hoping that the neighbors would hear” him. They did—and were able to break a window into his apartment, swim inside, and rescue him.” (Brooklyn Center for Independence of the Disabled v. Michael R. Bloomberg, Mayor and City of New York, No 11: Civ. 6690, May 10, 2013)

Evacuation routes relied heavily on public buses, and the subway system, all mostly inaccessible; and when accessible, were too crowded for wheelchairs. Only about 2% of taxicabs were accessible. The paratransit system, which is the the local accessible public transportation, and the subway were shut down preceding the storm. Furthermore, the City had not determined whether sufficient accessible transportation would be available in an emergency.

“Class member Melba Torres, who uses a wheelchair and lives on the Lower East Side of Manhattan, testified that after receiving an evacuation order, she sent her aide to investigate accessible transportation options, but that her aide reported to her that the buses being used to evacuate the people in her building were not wheelchair accessible. As a result, she did not evacuate, and spent six days in her apartment without running water, heat, or electricity. At one point, Torres testified, a police officer came to her apartment, but the officer stated that she could not receive evacuation assistance unless she was having a medical emergency.” (ibid)

There was a general assumption that individuals could evacuate their buildings without assistance, even when the electricity had been turned off. As such, there was no plan for the logistics of a mass evacuation or the coordination with ambulances for subsequent transportation. The City did not require high-rise buildings to have evacuation stair chairs. Many individuals with disabilities were stranded for days in their buildings without power. After the storm, search and rescue efforts were focused on life-threatening situations that equated to leaving individuals needing their adaptive equipment to work in their homes until their medical conditions became life-threatening; thus continuing to leave individuals stranded in their apartments.

“Class member Joyce Delarosa, who uses a wheelchair and relies on oxygen and lives on the east side of Manhattan, testified that during Hurricane Sandy, the power in building went out, leaving her unable to power her oxygen concentrator or exit the building. She called 911 for evacuation assistance, and was told that, “unless [she] was having an immediate medical crisis and need[ed] to go to the hospital,” she could not receive assistance. Because she did not think she needed to be in a hospital, but rather only needed to plug in her oxygen concentrator, she declined emergency

assistance. She testified that she called 311 to request assistance evacuating her daughter, who also uses a wheelchair, but was told that the City would not provide evacuation assistance unless her daughter needed to go to the hospital. Eventually, Delarosa testified, the consequences of lack of oxygen became so severe that she did require medical attention, at which point she called 911 again. EMS came to her apartment, used a stair chair to evacuate her, and provided her oxygen. Delarosa testified that the only way she was able to convince the EMS providers to evacuate her daughter too was to lie and say that her daughter needed to go to the hospital as well.” (ibid)

Shelters may have had makeshift ramps to create a “usable” entrance, but of the rest of the building, to include the bathrooms, most were still not accessible. There were communication boards included in shelter operator kits, but only seen at registration tables, and no sign language interpreters used to communicate important messages. The information in public messaging gave conflicting messages about whether or not individuals with disabilities would be able to shelter with their caregivers. Many shelters did not have the electricity necessary to charge adaptive and medical equipment or keep medications cold. There was not a stockpile of durable or consumable medical equipment and plans did not call for items of this type to be in general shelters.

Los Angeles

“Good leaders learn from history in order to avoid repeating the mistakes of the past (Assessing the Impact of Hurricane Katrina on Persons with Disabilities, 2007).” The emergency management department believed that since no disaster or emergency had occurred, and therefore no service provided or any action taken, there could be no ADA violation nor actual discrimination. The Court found, however, that the purpose of the City’s emergency preparedness program is to anticipate the needs of its residents and minimize makeshift solutions. Since planning existed for individuals without disabilities, but not for those with disabilities, it constituted a violation of the ADA; those without could prepare whereas those with could not. Without planning for, and thus failing to, address disability concerns, individuals with disabilities were “disproportionally vulnerable to harm in the event of an emergency or disaster” and “burdened ‘in a manner different and greater than it burdens others’.” (ibid)

The Court determined that a system for monitoring emergency management activities and a schedule for implementation, applying to all components of the City’s emergency management program, occur over three years; to allow a thoughtful and complete review with time to implement plans once revised and a final report at the conclusion of the three year period. To that end, the City was ordered to contract with a non-profit emergency management agency with a particular emphasis on preparing for persons with disabilities, who themselves were directed to subcontract with a local subject matter expert. This expert

evaluated the City's current plans, developed and oversaw implementation of revised emergency plans as to all components of the City's emergency management program to address the needs of persons with disabilities. These revisions came after meetings and collaboration with City personnel, and other governmental and non-governmental representatives to ensure better integration of services and resources. The expert provided bi-annual reports to the Court and counsel for the parties to monitor progress, which included the following information:

- identification of key municipal personnel involved in the process;
- identification of community groups and governmental agencies consulted or otherwise involved in the process;
- work plans (including time lines and completion dates) for revision of each of the City's emergency plans, broken down by type of plan;
- the status of the revision of the City's emergency plans, per the work plans developed by the expert;
- identification of any obstacles or problems identified by the expert in the review and revision of the plans.

Recommendation #1

The Taskforce recommends that the EOP be revised to include clear and explicit language regarding compliance. The recommendation is to include an additional planning assumption which states, *“It is assumed that the implementation of any and all emergency plans by DHSEM and/or any affiliated government agencies will be in compliance with Title II of the Americans with Disabilities Act.”*

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities in the provision of services, programs, or activities by public entities. 42 U.S.C. Section 12132. The law is intended to ensure that individuals with disabilities have meaningful access to government provided programs, services, and activities and is designed to eliminate both “outright intentional exclusion” and “the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, [and] failure to make modifications to existing facilities and practices.” 42 U.S.C. Section 12101(a)(5).

Although the current EOP contains numerous references relevant to disability compliance and thus complies with the ADA, the plan does not contain language that clearly and specifically commits the agencies involved in the implementation of the plan to ensuring that their emergency plans and the implementation of those plans are in compliance with both the language and spirit of the ADA. It should be noted that DHSEM does not have regulatory authority over the emergency plans of state agencies, local governments, and non-profit organizations.

Recommendation #2

The Taskforce recommends incorporating an accessible statewide emergency mass notification system into the EOP and emergency management. A funded position within DHSEM is also necessary to manage adequately and to utilize the mass notification system.

A crucial element of an inclusive emergency management program is an accessible mass notification system. In the State of New Mexico, there is currently NOT a statewide emergency notification system that is accessible to individuals with vision or hearing impairments. This leaves local jurisdictions and dispersed agencies to have independent alerting systems and creating the appearance that a statewide notification system would be redundant. The statewide mass notification system could provide all local and state agencies the capability to communicate emergency, disaster, and continuity of operations related information to the public and governmental employees using multiple mediums including automated voice calls to landline and mobile phones, and email and SMS text messages through an easy to use web-based interface. By using 911 data and/or publicly available phone data, many citizens and businesses would automatically be in the database. Providing a more comprehensive method to ensure dissemination reduces risk to the individual, community, and state in terms of human and risk management perspectives and potentially increasing the tax base and decreasing insurance costs.

Having a communal statewide portal would be preferential over the existing patchwork for several reasons:

First, a statewide notification system should have a modality that fits the need of the citizen in order to be accessible. There are systems available which allow the individual user to choose preferred contact methods, including landline phone, mobile phone, email, and SMS text; and to permit the individual on a voluntary basis to denote what functional needs s/he may have (see Registry Decisions under Additional Considerations.) For example, an individual who has registered his/her mobile phone and email address will receive a phone call and an email if an emergency, such as a wildfire, is causing an evacuation of his/her neighborhood. In addition, staff and citizens could be able to provide many more contact paths including Mobile Phone, SMS, Email, TTY/TDD, Fax, Home Phone, Business Phone, Social Media, IPAWS (integrated public alert and warning system) which includes Cellular Mobile Alert System/Wireless Emergency Alerts, etc. These features would increase the accessibility of a mass notification system and make it a truly all-inclusive multi-channel communication solution. The variability of the existing independent systems cannot guarantee multiple modes of communication necessary to achieve ADA compliance and creates additional barriers to appropriate information dissemination.

In addition, an added benefit of these systems is to survey the individuals contacted. Individuals receive a message in a form most suitable to them with an option of responding to a prompt, which could answer any question posed including “do you understand this message?” or “do you need evacuation assistance?” This aspect of a mass notification system embodies a paradigm shift moving from a passive one-way receipt of messaging to a two-way interactive real time communication system that generates actionable data and reduces the burden on general information lines activated in emergencies.

Second, a statewide notification system it would provide better organization, management, and consistency of messaging. It would facilitate efficient distribution of information through the state; and all jurisdictions, therefore all New Mexicans could have coverage, which they currently do not. Currently, the majority of jurisdictions within the state, including Catron County, Sierra County, McKinley County, Valencia County, Chaves County, and the City of Albuquerque, depend on radio and television to communicate emergency and disaster information to the public due to the lack of access to a mass notification system. This is problematic, as the public must be actively monitoring radio or television broadcasts to receive the information; furthermore, many rural areas of the state lack consistent radio and television signals making it difficult to ensure the public is well informed. The State will benefit from a common interoperable platform where all administrators/users are trained and adept in a common operating system. Not only can they help each other in times of disaster but also emergency managers could more easily transition communication responsibilities between communities based on this common operating platform in order to coordinate resources and response efforts.

Third, a statewide system would eliminate the barriers for one individual to subscribe to several different agencies in order to get all-important information. A statewide critical mass notification solution would provide for interoperable communication amongst all state agencies/departments and local municipalities, including all staff, citizens, and businesses. This would fill a massive preparedness and response communication gap by providing comprehensive coverage and protection to all citizens and staff regardless of the financial ability of the individual state departments and municipalities. In addition, by offering state agencies/departments and local jurisdictions a system for routine employee notifications will encourage more adoption and use of the system, ultimately adding to a greater return on investment and project success. For example, state agencies and local governments could use the system to notify government employees of office start delays and closures due to inclement weather. The system could also be used by a school to notify registered parents of a lockdown prompted by a suspicious person in the area. “Agencies [and naturally occurring networks] could be responsible for notifying all the programs within their networks and these programs would communicate with their clients or members on a local

level” (2004 New Mexico Advisory Work Group Report). Thus, a local provider, who has established recognition and trust with clients or members, could be the messenger “as [people with disabilities] are historically more isolated and reticent to engage with entities, people and processes unfamiliar to them” (2004 New Mexico Advisory Work Group Report).

Recommendation #3

It is recommended that DHSEM be given the regulatory authority through state law, as well as the appropriate number of funded positions, to provide an increased level of oversight for ADA compliance of all local jurisdictional emergency plans and to expand their repository to include the most current emergency plans of all jurisdictions.

As discussed above, the Department of Homeland Security and Emergency Management does not possess the regulatory authority to hold local jurisdictions accountable for compliance, except where local jurisdictions receive the federal EMPG funding through DHSEM. There is also no legal requirement for submission or review of local emergency operations plans (EOP) that do not receive this grant funding. Providing DHSEM regulatory authority over local jurisdictions would prove beneficial during emergencies not only for better coordination but also for better oversight at a state level. In turn, this would provide a method to improve consistency through a formal review mechanism that more directly includes ADA compliance for all local jurisdictions.

Barring this additional regulatory authority, the current review mechanism for EMPG recipients utilizing the Comprehensive Planning Guide 101-based crosswalk should include more specific ADA compliance related items. Additional guidance would need to be developed, as current guidance does not specifically address all issues and recent lessons learned within emergency planning. This review mechanism could perhaps be adapted for use in other State facilities and with State partner agencies. Initial items may be taken from the Department of Justice's *ADA Best Practices Tool Kit for State and Local Governments, Chapter 7, Emergency Management under Title II of the ADA*, see the Preliminary Resource List.

Additional Taskforce Generated Recommendations

The recommendations contained in this section address the spirit of the House Memorial 87, namely ensuring appropriate inclusion of the needs of people with disabilities into emergency management; yet are not directly related to ADA compliance in the state emergency operations plan. These recommendations include:

Creation of a Second Taskforce

“A catalyst is needed that drives the transfer of existing knowledge to new locales and contexts. In part, this means serving as a clearinghouse of information. However, it also means that one or more organizations could take the initiative to provide organization and direction to this effort. The five (5) Centers for Independent Living (CILs) and their satellites could be such organizations. Precedent has already been set (see “Assessing the Impact of Hurricane Katrina on Persons with Disabilities, 2007.”)

The Taskforce recommends the establishment of a second taskforce with the direction of researching and establishing a mechanism to coordinate, ensuring implementation capacity, and facilitating the implementation of the specific response plan once complete. In many respects, this taskforce will achieve many of the same goals as the non-profit organization and the expert contracted by the City of Los Angeles. In fact, several states have created an ADA compliance mechanism. Florida has an ADA Compliance Officer; Texas is looking into hiring for this position; New Jersey has a community member who advises and works with the state but not paid by the state. Louisiana has a group consisting of emergency management, the Red Cross, and disability community members.

We recommend that this taskforce be further committed to developing detailed implementation guidance for emergency plans that speaks directly to specific actions to be taken in order to provide meaningful access to individuals with disabilities during emergency response. Identifying specific parties accountable, action steps required and training and exercise integrated into existing emergency management activities (2008 New Mexico Task Force Report).

The taskforce should be a multidisciplinary entity with a multiyear timeline and clear deliverables and watermarks, made up of allied agencies and stakeholders in the emergency management and disability communities. The goal of the taskforce would be to create a detailed implementation guide to be used for emergency plans at the local level.

Taskforce Composition

We believe that the second taskforce should be ideally comprised of individuals with a pre-existing understanding of emergency management as well as the needs of individuals with disabilities in emergencies. This compilation will cultivate distinctive perspectives that will contribute to a greater understanding of the larger complex picture for all parties, but also result in a much-improved product. We believe that, at a minimum, the taskforce should be comprised of one representative from at least the following entities/agencies:

Aging and Long Term Services Department
American Red Cross
Association of Counties
Behavioral Health Collaborative
Children, Youth and Families Department
Commission for the Blind
Commission for the Deaf and Hard of Hearing
Department of Health, Bureau of Health Emergency Management, Department of
Department of Homeland Security and Emergency Management
Department of Information Technology
Department of Public Safety
Department of Transportation
Department of Veterans Services
Developmental Disabilities Planning Council
Disability Consumer Advocate(s)
General Services Department
Governor's Commission on Disability
Healthy Aging Collaborative
Human Services Department
Human Services Department
Indian Affairs Department
Municipal League
New Mexico Emergency Management Association
Public Education Department, Division of Vocational Rehabilitation
Statewide Independent Living Council

Needs Assessment

The initial goal of this taskforce would be to identify gaps in the current delivery system of emergency operations and determine the remedial actions necessary in order to influence local jurisdictional emergency operations plans. This would include formally establishing collaboration of all parties with statutory authority, applicable state agencies, and community partners with the result of integrated planning. Gaps in official plans should also be examined for formal agreements that speak to resource procurement and ADA compliance.

Guidance

From this taskforce, a literature review of pertinent documents should strongly influence the development of guidance regarding compliance with Title II of the ADA with a particular focus on: accessible communications, evacuation and transportation, sheltering and support services and other gaps in planning as identified. Additionally, this guidance should be provided to local jurisdictions and elaborate on what compliance would definitely mean and suggest courses of action to achieve these goals. For example, guidance would not only determine what constitutes facility accessibility, but also how to evaluate a facility for accessibility; what resources are needed for support services, and how to procure needed resources including developing provider agreements with the private sector. There are several resources and guides available, see Preliminary Resource List, which could appropriately be disseminated from a main archive of resource documents collected by the future taskforce.

Technical Support and Training

This taskforce would also be available to provide technical support and training to local jurisdictions on improving their plans towards greater integration and inclusion of those with disabilities. Taskforce members, more versed in disability-related agencies and their personnel, could suggest local subject matter expertise with whom emergency management or disability-related individuals could confer as well. In this regard, a mutually beneficial relationship could be fostered where emergency management can learn from the disability community and the disability community can learn from emergency management. Likewise, this interaction would assure ADA compliance of including people with disabilities when soliciting public input. The New Mexico Annual Conference of Homeland Security and Emergency Management would be an ideal opportunity for networking and training on this behalf and should involve both factions. The Taskforce sees significant merit in additional research and creation of additional opportunities for professionals to gain a greater understanding of the challenges of the other entity. For example, there is also a Southwest Conference on Disability, held in Albuquerque annually, which may provide elucidation and edification that impacts planning for emergency managers and from which emergency managers could present on topics of preparedness and response to disability-related individuals.

Individual preparedness

Individual preparedness is another area of focus where the current system could be bolstered. Ultimately, there are limits to what a government will be able to do on its own in a disaster; it is of course in the best interest of the individual to prepare himself or herself for an emergency as much as they are able. Personal preparedness is indisputably an important component of emergency planning and should be emphasized. The existing public education program includes training volunteers to educate their communities about emergency preparedness and to assist the State's emergency response; bringing together the leaders of community organizations to discuss and promote emergency preparedness;

giving presentations to the community; and distributing emergency preparedness brochures. There are also four links for different scenarios listed on the department's website that refer to disaster preparedness for individuals with disabilities, but there are no items available in different formats other than print and digital. It is recommended by the Taskforce that the guidance provided by the State include specifics for those with disabilities on how to prepare that includes adaptive equipment, communication aids, etc.; as well as transportation options (2004 New Mexico Advisory Work Group Report) and methods by which emergency information will be conveyed in an emergency.

Funded permanent position

To ensure continuance and reliability of compliance once the taskforce concludes, the taskforce should evaluate the necessity of adding a permanent access and functional need or ADA compliance position to DHSEM as a funded position, including development of the position description and responsibilities. Adding this position at the start of the taskforce would allow the position to work alongside the taskforce efforts and allows for the institutional memory needed for steady lasting progress. This position could orchestrate or provide:

- Training and guidance both internally and externally on ADA compliance, disability awareness, and community and individual preparedness
- Collaboration with other state agencies regarding access and functional needs for implementation of integration plan within the areas of planning, response and recovery; as well as training and public information/communication
- An Advisory Council on access and functional needs; thereby seeking continued input from subject matter expertise in state
- A conduit for education on pertinent recent law cases in conjunction with DHSEM General Counsel
- Help to ensure ADA accommodation from DHSEM and emergency management response
- Work with all related Emergency Support Functions for state level response or assistance in response
- Work with different areas within DHSEM to promote integration
- In conjunction with the Public Information Officer within the Joint Information System and the funded statewide mass notification system position to ensure thorough dissemination of critical information

As discussed earlier, there has been increasing coverage in the media of the failures of emergency operation plans in many places across the country. Also, there has been continuing coverage of the devastation and liability caused by the lack of planning and resource allocation necessary to ensure that the implementation of plans take into account meaningful access of individuals with disabilities. Given the current climate, the Taskforce believes that this is a perfect opportunity for all of the relevant state agencies to add specific,

coordinated and detailed information regarding individuals with disabilities to emergency plans as well as demonstrate the State's proactive engagement in these issues.

Supplementary Considerations:

Registry decisions

Being a combined expert panel in emergency management and the following operations and response as well as disability, this taskforce could assist the State in determining whether or not the formation of “voluntary disability registries” should be implemented in New Mexico. This would relate directly to the taskforce’s mission of needs assessment, recommendations, and application. Registries remain a controversial topic within emergency management and disability communities with several compelling and evocative reasons on both sides. Some states have found them to be invaluable; where others have considered expense prohibitive. Several states believe that a registry decision is best left to smaller, and more local, jurisdictions as their population demographics, geography, and resources dictate. Examining the pros and cons, there could perhaps be criteria created should a registry be considered prudent in New Mexico.

Universal Design

Universal design is a term to describe designing broad-spectrum products, programs, and environments to be usable by everyone, inherently accessible to the greatest extent possible. There are seven principles of Universal Design:

- Equitable use
- Flexibility in use
- Simple and intuitive
- Perceptible information
- Tolerance for error
- Low physical effort
- Size and space for approach and use

The concept of universal design should be promoted, taking into view the idea of disabilities as operationalized categories of different functional needs along a spectrum; allowing planners to focus on addressing the most severe, affected, hindered conditions and accounting for the less severe as well--saving time, effort and expense. For example, while curb cuts have proven useful for individuals with disabilities, many people without disabilities have found them beneficial as well. “During any large-scale emergency, there will of necessity be an emphasis on common sets of pre-planned procedures, policies, and programs. In the event of an emergency requiring the movement and/or provision of [services] to large numbers of people, there may be few opportunities to vary from routines and procedures to ensure that the needs of one individual –

whether a member of one of these populations or not – are met (2004 New Mexico Advisory Work Group).

During a disaster, opportunities to address the ad-hoc needs of one individual, whether or not they have a disability, may be rare. There is also “little time to perform just-in-time training or brief responders at the start of an emergency response on the unique needs of individuals with disabilities. In these circumstances, there is also likely to be a great deal of confusion and difficulty in communications (2004 New Mexico Advisory Work Group).” These types of trainings should occur for all responders ideally before an emergency. Hence, creating a response plan that addresses the needs of the entire population in the form of universal design could equate to all individuals receiving the resources they need in the form they need when they need it.

Conclusion

The Taskforce makes the following recommendations:

- **Revise the Department of Homeland Security and Emergency Management’s Emergency Operations Plan to include clear and explicit language regarding ADA compliance of local emergency management partners**
- **Purchase and implement a statewide accessible mass notification system into the Department of Homeland Security and Emergency Management’s Emergency Operations Plan**
- **Provide regulatory authority to the Department of Homeland Security and Emergency Management and the necessary funded positions, to compile and oversee the emergency plans of all local jurisdictions to ensure ADA compliance**

This Taskforce believes intent and spirit behind House Memorial 87 was to identify a mechanism that would provide inclusivity for people with disabilities into emergency management preparedness and response; and thereby, assure ADA compliance. Though these recommendations are not directly related to the State emergency operations plan’s ADA compliance, the Taskforce makes the following recommendations:

1. The creation of a Second Taskforce directed to
 - a. complete a literature review of best practice, guidance, associated litigation, and evidence based documents
 - b. identify barriers specific to New Mexico and in general
 - i. with potential solutions
 - ii. include the ability of emergency management to accomplish the tasks assigned
 - c. create an implementation plan with detailed steps on how to develop an inclusive and ADA compliant emergency management program statewide
 - d. a system to manage and supervise the implementation plan
 - e. ensure the permanency of implementation and oversight of the developed plan
2. The future taskforce is also assigned with creating
 - a. guidance for local jurisdictions on the detailed steps determined above
 - i. To include these areas: needs assessment, guidance, technical support and training, individual preparedness
 - b. the description and funding of a permanent position at DHSEM
 - i. to continue the ADA compliance implementation after the taskforce timeframe ends.

Anticipated Challenges

Funding for emergency management ebbs and flows in relation to public and Congressional motivation, which in turn, are largely affected by the proximity of recent disasters and emergencies. A majority of the time, there is extremely limited interest and desire on the part of the public to address the many and varied needs that would limit the potential devastation. Realistically, at a local level, the emergency manager may have several responsibilities on top of planning and executing emergency operations with little time to address them all. Emergency management is a difficult and rarely appreciated, often thankless position; understaffed, underfunded, and undervalued.

The Taskforce notes that engaging those most needed to complete this work may be a challenge. In the course of our work, a letter regarding our preliminary findings was sent to 104 agencies asking for their response and input. We received only two (2) responses. However, as recent litigation in this area demonstrates, a failure to adequately plan may well result in significant and deadly consequences—participation is crucial.

Likewise, the goals set by this taskforce will take a considerable amount of time and effort to develop the necessary infrastructure, but the importance of the work cannot be overstated.

Next Steps

Executive and legislative support is requested for the HM 87 report recommendations. As previous work left undone has demonstrated, there is so much to accomplish. We must strike when the iron is hot and move forward, as many states such as Florida, Louisiana, and New Jersey have already done, to address ADA compliance in emergency management through the establishment of a mechanism specific to this purpose.

Education is needed for stakeholders and the public regarding the reasons this issue is of paramount importance; and to cultivate their support for implementing strategies to promote and achieve emergency management ADA compliance.

Final Thoughts

It is important to remember that while this legislative report includes a significant amount of administrative language and emergency management terminology – the proposed recommendations will change and potentially save the lives of thousands of New Mexicans. If we do not take steps to address this growing concern, then the sensational stories like the ones from New York City will continue. Substantial emergencies occur in New Mexico every year where New Mexicans are significantly affected and suffer, disputing common perception that belittles the importance of emergency preparedness. Even an extremely conservative viewpoint must agree that New Mexicans with disabilities are disproportionately aggrieved due to unintended omission and inattentive planning. To the best of our abilities, we must be permitted to address this quickly, responsibly, and with the greatest sympathy and compassion.



House Memorial 87

Appendices