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MEMO TO: All CCAP Members

FROM: John R. Sallade, Managing Director, Insurance Programs

SUBJECT: **Mutual Aid Act of 2008 – Risk Management Implications**

DATE: March 16, 2009

Act 93 of 2008, which became law on October 8, 2008 and was effective immediately, establishes a new system of intrastate mutual aid between participating political subdivisions within the Commonwealth. The Act is very helpful in that it clarifies how emergency response mutual aid is to work, and provides strong immunities for public entities which participate. It is also very helpful for county emergency staff, in that county emergency managers no longer have to juggle mutual aid agreements when developing all-hazard response plans, and do not have to train 911 center dispatchers about which units they can call out and in what circumstance. The Act basically sets up a system where every public entity participates in emergency response mutual aid, and explains how that works (no agreement is needed). Public entities do have the option to not participate, and if they opt not to, must notify the county.

**The Act does present some new risk management issues for counties.** CCAP staff and our workers' compensation pool's (PComp) legal counsel have reviewed the Act, and this memo contains recommendations for all counties with regard to compliance with the Act in the areas of workers' compensation coverage, and general risk management.

The PComp Board of Directors has taken action to provide workers' compensation insurance coverage in order for members of PComp to comply with the Act. These changes have been reviewed and approved by PComp's reinsurer and by the Pennsylvania Department of Labor & Industry, and I have sent a separate detailed memo to PComp members explaining those actions.

A summary of the Mutual Aid Act's provisions can be found on pages 3 through 5 of this memo, and the complete text of the Act starts on page 6. Please make sure this memo is reviewed by your county solicitor and your risk management staff, as well as by the insurance producers used by the county for advice about workers' compensation insurance coverage.

### **Coverage for Coroners**

The Act defines Emergency Responders in section 7332, and coroners are included in the definition. Section 7338 requires the county to provide workers' compensation for all responders, so counties are now required to provide insurance for their coroners for emergency response activities.

Workers' compensation insurers are not required to provide coverage for elected officials, it is optional. You should check with your insurer about their ability to provide this coverage, as with or without insurance this obligation is now a fiscal responsibility for all counties. If you are self insured you should advise your reinsurer of this change in your covered employees.

PComp is providing this coverage to all county members of the insurance pool.

### **Coverage For Volunteers**

Section 7338 of the Act also requires coverage for county volunteers who are called out to respond to a mutual aid emergency response event. Counties do provide coverage for some volunteers, and this new requirement makes it essential for you to clearly identify who your county emergency response volunteers are (as opposed to volunteers associated with a township, borough or city) and make clear to those volunteers that the work comp coverage being provided to them is only for mutual aid emergency response situations to which they have been called out. (If they just show up to help they are not covered.) You should also talk with your workers' compensation insurer about providing this coverage. (PComp is providing coverage.) If you are self insured, make sure you review this change in coverage with your reinsurer.

### **Per Diem Employees**

As part of our ongoing discussions with counties about the Mutual Aid Act, an issue came up regarding deputy coroners who are paid on a per diem basis. PComp legal counsel has advised that any per diem employees (not just deputy coroners) should be reported in workers' compensation payroll in order to have work comp coverage. Workers' compensation case law is clear that per diem employees are covered by workers' compensation insurance.

### **Existing Mutual Aid Agreements**

Counties should also review any existing mutual aid agreements, and determine if you wish to retain the agreement or end it (the new law functions as an agreement unless a public entity opts out of the Act, but does not supplant any existing mutual aid agreements). It is also a good time to review your agreements and make sure they were adopted by the county commissioners, and have the recommended risk management contents explaining indemnification and insurance requirements.

If you have any questions about these recommendations, please contact me at CCAP, (717) 526-1010 x 3309, or by email at [jsallade@pacounties.org](mailto:jsallade@pacounties.org).

**SUMMARY**  
**Act 93 of 2008**

**INTRASTATE MUTUAL AID**

Synopsis : Provides for the establishment of an intrastate mutual aid system within the Commonwealth.

**Summary:**

Amends the Pennsylvania Emergency Management Services Code to establish an intrastate mutual aid system. Defines "mutual aid" as mutual assistance and sharing of resources among participating political subdivisions in the prevention of, response to and recovery from threats to public health and safety that are beyond the capability of an affected community to respond.

Establishes an Intrastate Mutual Aid Committee that is comprised of the following members:

- PEMA Director who serves as Chairman;
- State Fire Commissioner and EMS Director in the Department of Health;
- 3 representatives each from the career fire services, the volunteer fire services and emergency medical services;
- 3 county emergency management agency directors, one from each agency area, who are recommended by the respective agency area directors;
- 1 representative each from the State Chiefs of Police Association, the State Fraternal Order of Police and the PA State Police;
- 1 representative each from the statewide county and municipal government associations representing elected officials; and
- 3 representatives from county-based 911 programs.

Provides that the terms of office are two years and members may be appointed to subsequent terms. Requires the committee to meet at least once a year to review progress and status of the intrastate mutual aid system, to provide political subdivisions with a method to track and evaluate the system, to examine issues facing the political subdivisions and emergency responders in implementing the legislation to prepare an annual report, and to develop comprehensive guidelines and procedures to guide implementation of the system and govern recordkeeping, reimbursement procedures and requests for seeking assistance.

Provides that all political subdivisions be a part of the system unless they elect not to participate by enacting a resolution declaring their desire to not participate and by submitting a copy of the resolution to the agency and the county emergency management agency. Requires that all political subdivisions consult with fire and emergency medical services providers to discuss the emergency services needs of the political subdivision.

If the political subdivision elects to not participate in the system, they may at a later date participate by enacting a resolution declaring their desire to participate and by submitting a copy of the resolution to PEMA and the county emergency management agency. Exempts political subdivisions that are participating in the intrastate mutual aid system from the requirements of the Intergovernmental Cooperation Act.

Requires each participating jurisdiction responsible for emergency management to identify potential hazards; conduct joint planning, intelligence sharing, and threat assessment; conduct biennial training; identify and inventory current services, equipment, supplies, personnel and other resources; adopt and implement the standardized incident management system; and adopt and implement the National Incident Management System.

Permits a participating political subdivision to request assistance from other participating jurisdictions or their designated emergency response organizations. Requires that requests be initiated from the incident commander or designee at an incident location, the county 911 center or the county emergency manager where the incident occurs. All mutual aid requests must be made to the county 911 center, county emergency management coordinator or to PEMA. A written request for assistance shall be submitted as soon as is practicable after the verbal request is made.

Provides that a participating jurisdiction's obligation to provide assistance in the prevention of, response to and recovery from an incident be subject to the following:

- a responding jurisdiction may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction;
- emergency response personnel of a responding jurisdiction shall remain under the administrative and policy procedures and control of their respective jurisdiction, including medical protocols and standard
- operating procedures, but shall be under the operational control of the appropriate officials within the incident management system of the requesting jurisdiction;
- assets and equipment of a responding jurisdiction shall remain under the administrative and policy procedures and control of their respective jurisdiction but be under the control of the appropriate officials within the incident management system of the requesting jurisdiction; and
- the incident commander shall overall authority and responsibility for conducting incident operations and shall be responsible for the management of all incident operation at the incident site.

Provides that the requesting political subdivision shall assume responsibility for reimbursing the responding political subdivision pursuant to procedures established by the committee. If a dispute arises regarding reimbursement and it is not resolved within 90 days of the notice of the claim, then either party may request arbitration under the rules of the American Arbitration Association. However, this does not apply to mutual aid agreements that pre-date the legislation and which relate to routine incident response.

Requires the responding jurisdiction to provide insurance coverage for all vehicles and equipment used for intrastate mutual aid responses.

Provides that a responding political subdivision shall maintain appropriate workers' compensation insurance protection for municipal employees and volunteers representing the responding political subdivision when responding to a request under this system. Further provides that responders shall be

entitled to all applicable benefits while performing their normal duties as well as federal and state benefits afforded for line of duty deaths.

Provides that all activities performed under the intrastate mutual aid system are deemed to be governmental functions. It provides no immunity, rights or privileges for any individual responding to an incident where the response has not been requested by a participating political subdivision.

Does not preclude participating political subdivisions from entering into supplementary agreements with other jurisdictions.

Comment :

Pennsylvania is one of only fifteen states that has not adopted an intrastate mutual aid system.

NOTE: This summary is based on an analysis of the proposed legislation done for the use of the PA Senate.

**ACT 93 of 2008**

HOUSE AMENDED

PRIOR PRINTER'S NOS. 1674, 1738, 1876      PRINTER'S NO. 2413

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1225 Session of 2007

INTRODUCED BY PIPPY, BAKER, MELLOW, ORIE, McILHINNEY, COSTA, WOZNIAK, RAFFERTY, O'PAKE, ERICKSON, PILEGGI, FONTANA, WAUGH, STACK, FUMO, D. WHITE, RHOADES, BOSCOLA, KITCHEN, FERLO, A. WILLIAMS, VANCE, C. WILLIAMS, KASUNIC AND DINNIMAN,

DECEMBER 27, 2007

AS REPORTED FROM COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 22, 2008

AN ACT

Amending Title 35 (Health and Safety) of the Pennsylvania Consolidated Statutes, providing for mutual aid.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Chapter 73 of Title 35 of the Pennsylvania Consolidated Statutes is amended by adding a subchapter to read:

SUBCHAPTER C  
INTRASTATE MUTUAL AID

Sec.

- 7331. Purpose of subchapter.
- 7332. Definitions.
- 7333. Intrastate Mutual Aid Committee.
- 7334. System.
- 7335. Assistance.
- 7336. License, certificate and permit portability.
- 7337. Insurance.
- 7338. Workers' compensation.
- 7339. Immunity.
- 7340. Effect on other agreements.

§ 7331. Purpose of subchapter.

The purpose of this subchapter is to create a system of intrastate mutual aid between participating political subdivisions within this Commonwealth, whereby each participating political subdivision recognizes that emergencies transcend the boundaries of a political subdivision and that

intergovernmental coordination is essential for the protection of lives and property and for the best use of available public and private assets. The system shall provide for mutual assistance among the participating political subdivisions in the prevention of, response to and recovery from threats to public health and safety that are beyond the capability of an affected community to respond. The system shall provide for mutual cooperation among the participating subdivisions in conducting exercises, testing or other training activities.

§ 7332. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agency." The Pennsylvania Emergency Management Agency.

"Committee." The Intrastate Mutual Aid Committee.

"Dedicated emergency response organization." Any entity organized, chartered or incorporated in this Commonwealth or chartered by the Congress of the United States for the primary purpose of providing emergency services. The term shall include volunteer, career and combination organizations.

"Emergency responder." An individual in the public or private sector who has special skills, qualification, training, knowledge or experience, whether or not the person possesses a license, certificate, permit or other official recognition for the skills, qualification, training, knowledge or experience, that would benefit a participating political subdivision in responding to an authorized mutual aid request or participating in an authorized drill or exercise. The term shall include a law enforcement officer, a firefighter, an emergency medical services worker, a physician, nurse or other public health worker, an emergency management official, a coroner or medical examiner, a State-certified hazardous materials team member, a public works worker, a building inspector, an architect, an engineer or other design professional or a person with specialized equipment operations skills or training or with any other skills needed to provide aid in a declared emergency.

"Incident." Any event or condition which constitutes an actual or imminent threat to public health and safety, public or private property or the economic well-being of the community.

"Incident commander." The individual responsible for all incident-related activities, including the development of strategies and tactics and the ordering and releasing of resources as provided under the National Incident Management System.

"Mutual aid." Mutual assistance and sharing of resources among participating political subdivisions in the prevention of, response to and recovery from threats to public health and safety that are beyond the capability of an affected community to respond.

"National Incident Management System." The National Incident Management System established by the United States Department of Homeland Security.

"Participating political subdivision." A political subdivision that has not opted out of the intrastate mutual aid system.

"Political subdivision." Any county, city, borough, incorporated town or township. The term shall include any council of governments established among any of the above.

"Requesting political subdivision." A participating political subdivision that requests assistance under this subchapter.

"Responding political subdivision." A participating political subdivision that responds to a request for assistance under this subchapter.

"System." The intrastate mutual aid system.

§ 7333. Intrastate Mutual Aid Committee.

(a) Establishment.--There is established the Intrastate Mutual Aid Committee.

(b) Membership.--The committee shall be comprised of the following members:

- (1) The director of the agency or a designee, who shall serve as the chairman of the committee.
- (2) The State Fire Commissioner and the Director of the Bureau of Emergency Medical Services of the Department of Health or any successor bureau or administrative unit having similar responsibilities.
- (3) Three representatives each from the career fire services, the volunteer fire services and the emergency medical services.
- (4) Three county emergency management agency directors, one from each agency area, who shall be recommended by the respective agency area directors.
- (5) One representative each from the State Chiefs of Police Association, the State Fraternal Order of Police and the Pennsylvania State Police.
- (6) One representative each from the Statewide county and municipal government associations' representing elected officials.
- (7) Three representatives from county-based 911 programs.
- (8) One representative from the Pennsylvania State Coroners Association.

(c) Appointments.--Each member under subsection (b) shall be appointed by the director of the agency, and the appointment shall be based on recommendations from the organizations and associations represented. The county-based 911 members shall be selected from recommendations made by the three agency area directors.

(d) Terms of office.--Members shall serve a term of two years, and may be appointed for subsequent terms.

(e) Duties of committee.--The committee shall do all of the following:

- (1) Hold at least one meeting each year to review the progress and status of the intrastate mutual aid system.
- (2) Provide participating political subdivisions with a method to track and evaluate the system.
- (3) Examine issues facing participating political subdivisions and emergency responders regarding the implementation of this subchapter.
- (4) Prepare an annual report on the condition and effectiveness of mutual aid in this Commonwealth, which shall be submitted to the chairperson and minority chairperson of the Veterans Affairs and Emergency Preparedness Committee of the Senate and the chairperson and minority chairperson of the Veterans Affairs and Emergency Preparedness Committee of the House of Representatives. This report may contain recommendations for correcting any deficiencies within the system.
- (5) Develop all of the following:

- (i) Comprehensive guidelines and procedures that address all of the following:
  - (A) Projected or anticipated costs potentially incurred by a participating political subdivision.
  - (B) Recordkeeping for participating political subdivisions.
  - (C) Reimbursement procedures and other necessary implementation elements.
  - (D) Any other procedures that the committee deems necessary.
- (ii) Checklists for requesting and providing assistance.
- (iii) Forms for requests and other records to document the deployment and return of assets.

§ 7334. System.

(a) Establishment.--An intrastate mutual aid system is established for the purpose of providing mutual aid within this Commonwealth.

(b) Participation.--

(1) All political subdivisions within this Commonwealth shall be a part of the system unless the political subdivision elects not to participate by enacting a resolution declaring their desire not to participate and by submitting a copy of the resolution to the agency and to its county emergency management agency.

(2) All political subdivisions within this Commonwealth shall consult with fire and emergency medical services providers to discuss the emergency services needs of the political subdivision.

(3) Any political subdivision that elects not to participate in the system, as provided under subsection (a), may at a later date elect to participate in the system by enacting a resolution declaring its desire to participate and by submitting a copy of the resolution to the agency and to its county emergency management agency.

(4) Participation by a political subdivision in the system of intrastate mutual aid established by this subchapter shall not be subject to the requirements of 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation).

(c) Responsibilities.--It shall be the responsibility of each participating political subdivision with jurisdiction over and responsibility for emergency management within that political subdivision to do all of the following:

(1) Identify potential hazards that could affect the participating political subdivision using an identification system as developed by the committee common to all participating political subdivisions.

(2) Conduct joint planning, intelligence sharing and threat assessment development with contiguous participating political subdivisions.

(3) Conduct joint training with contiguous participating political subdivisions at least biennially.

(4) Identify and inventory the current services, equipment, supplies, personnel and other resources related to planning, prevention, mitigation, response and recovery activities of the participating political subdivisions in accordance with the National Incident Management System Integration Center resource management guidance.

(5) Adopt and implement the standardized incident management system approved by the agency.

(6) Adopt and implement the National Incident Management System requirements established by the United States Department of Homeland Security.

§ 7335. Assistance.

(a) Requests.--A participating political subdivision may request assistance of other participating political subdivisions or their designated emergency response organizations. All requests for assistance shall be initiated from the incident commander or authorized designee at an incident location, the county 911 center or the county emergency manager where the incident occurs. All intrastate mutual aid requests for assistance shall be made to the county 911 center or county emergency management coordinator or authorized designee in the responding county. Intrastate mutual aid requests for assistance may also be made through the agency. A written request shall be submitted after a verbal request is made as soon as practicable or within the number of days that the agency, in its discretion, may determine.

(b) Response to requests.--A participating political subdivision's obligation to provide assistance in the prevention of, response to and recovery from an incident or in authorized drills or exercises shall be subject to all of the following conditions:

(1) A responding political subdivision may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction.

(2) Emergency response personnel of a responding political subdivision shall remain under the administrative and policy procedures and control of their respective jurisdiction, including medical protocols, standard operating procedures and other protocols, but shall be under the operational control of the appropriate officials within the incident management system of the requesting political subdivision.

(3) Assets and equipment of a responding political subdivision shall remain under the administrative and policy procedures and control of their respective jurisdiction but shall be under the control of the appropriate officials within the incident management system of the requesting political subdivision.

(4) The incident commander shall have overall authority and responsibility for conducting incident operations and shall be responsible for the management of all incident operations at the incident site.

(c) Reimbursement.--A requesting political subdivision shall reimburse the responding political subdivision in accordance with procedures established by the committee. A responding political subdivision may donate assets of any kind to a participating political subdivision. If a dispute arises regarding reimbursement, involved parties shall make every effort to resolve the dispute within 30 days of written notice of the dispute by the party asserting noncompliance. In the event that the dispute is not resolved within 90 days of the notice of the claim, either party may request the dispute be resolved through arbitration. Any arbitration requested under this subsection shall be conducted under the commercial arbitration rules of the American Arbitration Association.

(d) Exceptions.--The provisions of this section shall not apply to specific mutual aid agreements which exist on the effective date of this section and which were made between political subdivisions and emergency response organizations to cover response to routine incidents.

§ 7336. License, certificate and permit portability. If a person holds a license, certificate or other permit

issued by a participating political subdivision or the Commonwealth evidencing qualification in a professional, mechanical or other skill and the assistance of that person or entity is requested by a participating political subdivision, the person shall be deemed to be licensed, certified or permitted in the political subdivision requesting assistance for the duration of the incident response or authorized drills or exercises and subject to any limitations and conditions the chief executive of the participating political subdivision receiving the assistance may prescribe by executive order or otherwise.

§ 7337. Insurance.

A responding political subdivision shall ensure that adequate insurance protection is in effect covering all vehicles and equipment used in response to an intrastate mutual aid request. Personnel of the responding political subdivision shall maintain direct and overall control of all vehicles and equipment utilized in an intrastate mutual aid response and shall ensure that vehicles and equipment are used within intended design specifications.

§ 7338. Workers' compensation.

Notwithstanding any other provision of law, a responding political subdivision shall provide appropriate workers' compensation insurance protection for municipal employees and volunteers representing the responding political subdivision when responding to a request under this system. Personnel of a responding political subdivision who sustain injury or death in the course of and arising out of their employment shall be entitled to all applicable benefits normally available to personnel while performing their duties for their employer. Responders shall receive any additional Federal and State benefits that may be available to them for line-of-duty deaths.

§ 7339. Immunity.

All activities performed under the intrastate mutual aid system are deemed to be governmental functions. For the purposes of liability, all persons responding under the operational control of the requesting political subdivision shall be deemed to be employees of the requesting participating political subdivision. Except in cases of willful misconduct, gross negligence or bad faith, neither the participating political subdivisions nor their employees shall be liable for the death of or injury to persons or for damage to property when complying or attempting to comply with the system. This subchapter shall provide no immunity, rights or privileges for any individual responding to an incident where the response has not been requested by a participating political subdivision.

§ 7340. Effect on other agreements.

Nothing in this subchapter shall preclude participating political subdivisions from entering into supplementary agreements with another political subdivision. Nothing in this subchapter shall affect any other agreement to which a political subdivision may, on the effective date of this section, be a party.

Section 2. This act shall take effect immediately.