

GUIDE FOR DEVELOPING LEGAL DOCUMENTS GOVERNING CROSS-JURISDICTIONAL SHARING ARRANGEMENTS

HOW TO USE THIS TOOL

This tool was prepared by the Center for Sharing Public Health Services and the Network for Public Health Law to assist in developing legal agreements that govern cross-jurisdictional sharing (CJS) arrangements.

Each CJS agreement is based on unique needs and, therefore, has unique formats and characteristics. As a result, it would be difficult to develop a uniform template for CJS agreements due to differences in the types of CJS arrangements and because of variability in state and local laws, regulations, ordinances and procedures.

However, the authors are able to provide guidance through the following checklist (page 2), which was developed after reviewing the work of many teams engaged in CJS arrangements. The checklist is organized into tables that contain several themes the authors recommend be addressed in most legal sharing agreements. Each

table represents a section of a CJS agreement and lists the components that could be included in that section. Additional guidance and examples of legal agreements are available on the Center's website at <http://phsharing.org/category/resources/legal-sharing-agreements>.

Please keep in mind some assumptions and limitations while using this document. First of all, this guide **does not replace the need for legal advice** in developing and actuating the legal agreement for a CJS arrangement. It is critically important that you work with legal counsel in preparing any agreements. Second, this guide contains only items that are specific to the CJS components of an agreement. Legal counsel will help you determine if more generic details should also be included in the legal document.

In addition, the **checklist contained in this document should be used as general guidance**, not as a step-by-step

guide. Some elements may not be universally applicable, and the order in which items are arranged may need to be changed depending on local needs and circumstances. Furthermore, some sections of the document may need to be modified depending on the specific characteristics of the programs or services to be shared.

Finally, this document is **not a substitute for the careful exploration and planning that must take place** before a discussion of the legal nature of the agreement even starts. That process, which is described in *Phase One: Explore* of the Center's *Roadmap to Develop Cross-Jurisdictional Sharing Initiatives*, helps partners investigate the conceptual feasibility of the potential CJS arrangement. All partners should review *Phase One* before starting to draft a legal agreement.

If you have questions or need additional guidance, please email phsharing@khi.org.

Additional guidance and examples of legal agreements are available on PHAB's website.

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BACKGROUND

This section of the legal agreement introduces the rationale for the agreement, the issue(s) to be addressed, the parties involved and general expectations. Components may include answers to the following questions:

- What is the issue to be addressed?
- What outcomes are expected?
- Who are the signing parties and how are they referenced in the document?

Reference: Roadmap, Phase One: Explore – Why Would You Consider CJS and Who Are the Partners that Should Be Involved?

SCOPE

This section defines the scope of the agreement. Components may include answers to the following questions:

- What is the scope of services subject to this agreement?
- Are there clear parameters, definitions and boundaries for the shared services?

Reference: Roadmap, Phase One: Explore – What Services and Capacities Would Be Shared?

GOVERNANCE

This section describes the governance model for the shared service(s), including authorities and powers. Components may include answers to questions related to the form of the agreement and the decision process for the shared service(s).

FORM OF THE AGREEMENT

- What kind of agreement will be at the base of the CJS initiative?
 - Contract
 - Interlocal Agreement or Memorandum of Understanding
 - Council of Governments
 - Others
- Is the agreement and its format in compliance with state laws?
- Are there entities other than those directly involved in sharing services that need to review or approve the agreement before it can be executed (for example, state agencies)?

DECISION-MAKING PROCESS: WHO

- Who will approve the agreement for the signing parties?
 - Who has the authority to sign?
 - Who will approve changes to the agreement once signed?
- Once the agreement is signed, who will have the authority to make decisions?
 - Is lead responsibility for decision-making power in the CJS arrangement delegated from one jurisdiction to the other(s), (for example, through a contractual arrangement)?
 - If the decision-making power is jointly shared by the signing partners, will decisions be made by individual agency heads or delegates, or will there be a formal group of people in charge (such as a board)?
 - If there is a formal group of people in charge:
 - Who is included in this group? (list continued on next page)

GOVERNANCE (continued)

DECISION-MAKING PROCESS: WHO (continued)

- Who selects and appoints the members?
- How long does the appointment of each member last?
- Are multiple terms allowed?
- How will vacancies be filled?
- Do all members have equal rank and status, or are there some with special status (such as a chair or officers of a board)?
- Do all members have an equal vote?

DECISION-MAKING PROCESS: HOW

- Will there be formal meetings of the partners during which decisions are made?
 - How often?
 - Who calls the meetings?
- Is the decision-making process clearly identified?
 - How will decisions be made?
 - Is a quorum needed before action can be taken?
 - Will all decisions be made by simple majority?
- Are decisions binding for all participating jurisdictions?
- Does anyone have veto power?
- Is a dispute resolution process clearly in place?
- Is there a mechanism to report progress and results of the CJS agreement to each jurisdiction's governing body (such as board of health, board of commissioners, etc.)?
 - Do some decisions require endorsement from the governing bodies?
- In the case of a single agency having been delegated lead responsibility for carrying out the CJS arrangement, is there a clear reporting process for informing the other participating agencies regarding the arrangement?

References: Roadmap, Phase Two: Prepare and Plan – Governance; Legal Sharing Agreement.

DURATION

This section describes the duration of the agreement and the process to amend it. Components may include answers to the following questions:

- Is the duration of the agreement clearly identified, including the option of continuing in perpetuity unless altered?
 - Is there a clearly identified mechanism for termination or severability of the agreement?
 - If one of the parties wants out, is there a mechanism for that? Would the entire agreement be voided in that case?
 - Is the renewal process (if applicable) of the agreement clearly identified?
 - What could trigger a request to revisit and amend the agreement? What would the mechanism be?
- Is there a mechanism for the disposition of shared assets should the agreement come to an end or if a partner decides to step out?

References: Roadmap, Phase Two: Prepare and Plan – Legal Sharing Agreement; Change Management; Timeline.

COST-SHARING

This section defines how the costs of implementing the sharing agreement and providing the shared services or functions will be distributed. Components may include answers to the following questions:

- How will the shared activities or functions be funded?
- Who will have the authority to allocate resources?
- How will the costs be shared?
- Is there a mechanism to support the costs of implementing the CJS agreement (e.g., communicating with decision-makers, legal fees, handling logistics associated with board meetings if applicable, etc.)?

References:

- 1) *Roadmap, Phase Two: Prepare and Plan – Fiscal and Service Implications.*
- 2) *Determining and Distributing Costs of Shared Public Health Services*
(<http://phsharing.org/wp-content/uploads/2015/04/DeterminingDistributingCostsCJS.pdf>).

OTHER LEGAL ISSUES

This section defines other legal issues such as personnel, liability and outsourcing. Components may include answers to the following questions:

- Are the liability aspects adequately addressed?
 - Is liability for the project going to be shared evenly by all the members?
 - Do the parties agree to cover their own liability, or are there parties that will be held harmless throughout the process?
- If portions of the arrangement are assigned, sub-contracted or delegated to other entities, can those portions be excluded from the agreement? In this case, will the permission of the other partners be required?
- Are there issues related to vendors and procurement?
 - Can vendors from one jurisdiction provide goods used and paid for by another jurisdiction?
- Are there issues related to personnel contracts?
 - Will there be staff hired by one jurisdiction working outside of their own jurisdiction? If so, what are the implications in regard to:
 - Workers' compensation
 - Union agreements
 - Travel reimbursement
 - Use of agency vehicles
 - Liability
- Are there issues related to office space and occupancy?
 - Rent
 - Phone and administrative costs (e.g., copying)
 - Equipment depreciation

References: *Roadmap, Phase Two: Prepare and Plan – Legal Issues; Logistical Issues.*

PHAB CENTER FOR INNOVATION

The PHAB Center for Innovation serves as a national initiative guiding health departments in using innovation as a tool to drive change and improve health and equity.

THE NETWORK FOR PUBLIC HEALTH LAW

The Network for Public Health Law provides insightful legal assistance, helpful resources and opportunities to build connections for local, tribal, state and federal officials; public health practitioners; attorneys; policy-makers; and advocates.

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