

DRAFT
FOR DISCUSSION ONLY

UNIFORM EMERGENCY VOLUNTEER HEALTHCARE SERVICES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For June 2006 Drafting Committee Meeting

WITH PREFATORY NOTE AND WITHOUT COMMENTS

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ON UNIFORM STATE LAWS

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May 31, 2006

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HEALTHCARE SERVICES ACT**

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**UNIFORM EMERGENCY VOLUNTEER
HEALTHCARE SERVICES ACT**

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UNIFORM EMERGENCY VOLUNTEER HEALTHCARE SERVICES ACT

Prefatory Note

The human devastation in the Gulf Coast states from Hurricanes Katrina and Rita demonstrated significant shortcomings in the ability of the nation's emergency services delivery system to efficiently and expeditiously incorporate into disaster relief operations the services provided by private sector healthcare professionals. This includes employees and volunteers of non-governmental disaster relief organizations who were needed to meet surge capacity in affected areas and provide timely healthcare assistance to hundreds of thousands of victims of the disaster.

Although the U.S. Public Health Service, the Armed Forces, the Federal Disaster Medical Service, and healthcare professionals employed by state and local governments provided much-needed healthcare services, the magnitude of the disaster swamped the ability of these organizations to effectively handle relief operations. Additional resources were readily available throughout the country and thousands of healthcare professionals immediately volunteered to provide assistance. However, state-based emergency response systems lacked a uniform process and legal framework to recognize out-of-state professional licenses and other benefits necessary to authorize and encourage these volunteers to provide healthcare services in many affected areas. In some jurisdictions, volunteer health personnel were not adequately protected against exposure to tort claims or injuries or deaths suffered by the workers themselves.

Still, as numerous media reported, thousands of doctors and other healthcare practitioners from across the country set aside their practices and traveled to the Gulf Coast to provide emergency healthcare services to those in need. Many of these volunteers came through organized systems, such as the federally-funded, state-based Emergency Systems for the Advance Registration of Volunteer Health Professionals (ESAR-VHP), or local-based Medical Reserve Corps (MRCs). Other volunteers, however, deployed spontaneously to affected areas, complicating response efforts. Some of these health volunteers were turned away or used for purely administrative tasks because their out-of-state professional licenses were not recognized or for other reasons. The Metropolitan Medical Response System program, part of the federal Department of Homeland Security (DHS), references a report on its website:

Volunteer physicians are pouring in to care for the sick, but red tape is keeping hundreds of others from caring for Hurricane Katrina survivors. The North Carolina mobile hospital waiting to help ... offered impressive state-of-the-art medical care. It was developed with millions of tax dollars through the Office of Homeland Security after 9-11. With capacity for 113 beds, it is designed to handle disasters and mass casualties. It travels in a convoy that includes two 53-foot trailers, which on Sunday afternoon was parked on a gravel lot 70 miles north of New Orleans because Louisiana officials for several days would not let them deploy to the flooded city. 'We have tried so hard to do the right thing. It took us 30 hours to get here,' said one of the frustrated surgeons, Dr. Preston "Chip" Rich

of the University of North Carolina at Chapel Hill. That government officials can't straighten out the mess and get them assigned to a relief effort now that they're just a few miles away 'is just mind-boggling,' he said.

As a consequence, rather than treating the injured, sick and infirm, some qualified physicians, nurses and other healthcare practitioners found themselves: (1) waiting in long lines in often futile attempts to navigate through a semi-functioning bureaucracy; or (2) providing other forms of assistance, such as general labor, which failed to utilize their desperately needed healthcare skills. Others proceeded to treat victims at the risk of violating existing state statutes and potentially facing criminal, civil, or administrative penalties. Out-of-state practitioners providing medical treatment also faced the real possibility of non-coverage under their medical malpractice policies.

While the magnitude of the emergency presented by Hurricane Katrina exceeded the scope of disasters experienced in this country for many decades, foreseeable emerging events pose similar threats. Future storms (especially in the New York City and New England area); major earthquakes in San Francisco, Los Angeles or other heavily urbanized areas; volcanic eruptions in the Pacific Northwest; tidal waves on the east and west coasts; incidents of terrorism involving weapons of mass destruction, including nuclear, biological and chemical agents; and flu or other pandemics may overwhelm the resources of disaster healthcare delivery systems. To meet patient surge capacity, reliance on private sector health professionals and non-governmental relief organizations may be needed.

This presupposes that the legal environment supports the deployment and use of intra- and inter-state volunteer healthcare practitioners. In fact, there are some existing major legal gaps and deficiencies that may stymie, rather than encourage, widespread volunteer activities during emergencies. The federal Congress continues to examine some of these gaps through the introduction of multiple federal bills since September, 2005. Similarly, it has directed the Department of Health and Human Services (DHHS) to establish the Disaster Medical Relief Service consisting of "intermittent federal employees" who enjoy interstate professional licensing recognition and protections from civil liability via federal law.

States are uniquely positioned to identify and remedy these gaps as well. Many state governments have recognized the need to grant emergency licensing recognition on an interstate basis and to afford disaster healthcare workers with protection from civil liability. Currently every state (except HI) have ratified the Emergency Management Assistance Compact (EMAC), which provides for licensing reciprocity and relief from civil liability to "state forces" deployed to respond to emergencies. Many state laws underlying the declaration of public health emergencies (typically framed based on the Model State Emergency Health Powers Act developed by the *Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities*) also provide for healthcare licensing licensure recognition in many jurisdictions. However, no uniform provisions have been drafted to date to efficiently incorporate the full resources of our healthcare delivery system, especially volunteer healthcare practitioners, into emergency responses.

Specifically concerning the deployment and use of volunteer healthcare practitioners during emergencies or other dire circumstances, a uniform approach to drafting model legislative language among states presents several key advantages:

- Lacking uniformity, separate state-by-state enactments create inconsistencies and dilemmas at a time when their solution is unwieldy if not unworkable;
- An ad hoc, state-by-state approach is less likely to benefit from the focused participation of the key national constituencies that may support a uniform law; and
- Even the best single-state bill cannot anticipate or reflect the valid concerns of other states.

The Uniform Emergency Volunteer Healthcare Services Act (UEVHSA) provides model legislative language to facilitate organized response efforts among volunteer health professionals. UEVHSA's provisions address the following:

- The specific kinds of volunteer healthcare practitioners covered (focused on pre-registered volunteers who act on their own free will);
- Application of its coverage to declared states of disaster, emergency, or public health emergency (or like terms at the state or local level) or in dire circumstances;
- Procedures to recognize the valid and current licenses of volunteer healthcare practitioners in other states for the duration of an emergency or invocation of the Act;
- Removal of significant disciplinary sanctions or civil liability against volunteer healthcare practitioners, or those who employ, deploy, or supervise them; and
- Worker's compensation protections for volunteer healthcare practitioners.

Legislative Notes

To be provided.

1 **UNIFORM EMERGENCY VOLUNTEER HEALTHCARE SERVICES ACT**

2
3 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Emergency
4 Volunteer Healthcare Services Act.

5 **SECTION 2. DEFINITIONS.** As used in this [act]:

6 (1) **“Comprehensive healthcare facility”** means a healthcare entity that provides
7 comprehensive inpatient and outpatient services on a regional basis. The term includes tertiary
8 care and teaching hospitals.

9 *[Reporter’s Note: This definition needs additional work. The term is used in Section 4(a)(2) to*
10 *describe a type of registration system that will be recognized by an enacting state without action*
11 *by an agency of that state.]*

12
13 (2) **“Coordinating entity”** means an entity that acts as a liaison to facilitate
14 communication and cooperation between source and host entities but does not provide healthcare
15 services in the ordinary course of its activities as liaison.]

16 *[Reporter’s Note: This definition needs additional work. The major idea is to identify those*
17 *entities other than host and source entities that should be immunized from vicarious liability*
18 *under Section 7(c).]*

19
20 (3) **“Credentialing”** means obtaining, verifying, and assessing the qualifications of a
21 healthcare practitioner to provide patient care, treatment, and services in or for a healthcare
22 entity.

23 (4) **“Disaster relief organization”** means an entity that provides emergency or disaster
24 relief services that include healthcare services provided by volunteer healthcare practitioners and
25 that (A) is designated or recognized as a provider of such services pursuant to a disaster response
26 and recovery plan adopted by the [name of appropriate agency or agencies] or (B) conducts its

activities in coordination with the *[name of appropriate agency or agencies]*.

(5) **“Emergency”** means an emergency, disaster, or public health emergency or similar term as defined by the laws of this state[, a political subdivision of this state, or a municipality or other local government within this state].

(6) **“Emergency declaration”** means a declaration of an emergency issued by a person authorized to do so by the laws of this state[, a political subdivision of this state, or a municipality or other local government within this state].

(7) **“Emergency Management Assistance Compact (EMAC)”** refers to the mutual aid agreement ratified by Congress and signed into law in 1996 as Public Law 104-321, and subsequently enacted by this state and codified at *[cite]*.

(8) **“Emergency Systems for Advance Registration of Volunteer Health Professionals (ESAR-VHP)”** means that state-based program created with funding through the Health Resources Services Agency under Section 107 of the federal Public Health Security and Bioterrorism Preparedness and Response Act of 2002, P.L. 107-188, to facilitate the effective deployment and use of volunteers to provide healthcare services during emergencies.

(9) **“Entity”** means a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial organization. The term does not include an individual.

[Reporter’s Note: While this is a standard conference definition for this term, it may be both too broad and too narrow in the context of this act. We might consider adding “disaster relief organization” and “healthcare facility” and excluding those types of entities (e.g., business trusts, estates, trusts) that will never be involved in the kinds of activities contemplated by the act.]

1 (10) **“Good faith”** means honesty in fact.

2 (11) **“Healthcare practitioner”** means a person licensed in any state to provide
3 healthcare services.

4 (12) **“Healthcare services”** means the provision of care, services, or supplies related to
5 the health or death of an individual, including (A) preventive, diagnostic, therapeutic,
6 rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure
7 concerning the physical or mental condition, or functional status, of an individual or that affects
8 the structure or function of the body; (B) sale or dispensing of a drug, device, equipment, or
9 other item to an individual in accordance with a prescription; and (C) mortuary services.

10 (13) **“Host entity”** means a healthcare entity, disaster relief organization, or other entity
11 in this state that uses volunteer healthcare practitioners to provide healthcare services during the
12 period of an emergency or other invocation of this [act].

13 (14) **“Individual”** means a natural person.

14 (15) **“License”** means official permission granted by a competent governmental
15 authority to engage in healthcare services otherwise considered unlawful without such
16 permission.

17 (16) **“Medical Reserve Corps (MRC)”** means a local unit consisting of trained and
18 equipped emergency response, public health, and medical personnel formed pursuant to Section
19 2801 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002,
20 P.L. 107-188, to ensure that state and local governments have appropriate capacity to detect and
21 respond effectively to an emergency.

22 (17) **“Person”** means an individual or an entity.

1 (18) **“Privileging”** means the authorization granted by an appropriate authority, such as
2 a governing body, to a healthcare practitioner to provide specific care, treatment, and services in
3 a healthcare entity subject to well defined limits based on factors that include license, education,
4 training, experience, competence, health status, and judgment.

5 (19) **“Scope of practice”** means the services routinely performed by a healthcare
6 practitioner consonant with the practitioner’s education, training, and specialized judgment.

7 (20) **“Source entity”** means a healthcare or other entity located in any state that employs
8 or uses the services of healthcare practitioners who volunteer to provide healthcare services
9 during the period of an emergency declaration or other invocation of this [act].

10 (21) **“Standard of care”** means the reasonable diligence, skill, and competence
11 employed by healthcare practitioners in the same capacity or general field of practice who have
12 available to them the same general facilities, equipment, and options to provide appropriate care
13 or treatment as required by the laws of this state.

14 (22) **“State”** means a state of the United States, the District of Columbia, Puerto Rico,
15 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
16 of the United States. The term also includes an Indian tribe or band that has jurisdiction to issue
17 emergency declarations[, or any other jurisdiction recognized as suitable to provide volunteer
18 healthcare practitioners for use in this state by the *[name of appropriate agency or agencies]*[,
19 including any jurisdiction that is a party to the International Emergency Assistance Compact]].

20 (23) **“Volunteer healthcare practitioner”** means a healthcare practitioner who as an act
21 of the practitioner’s own volition provides healthcare services in this state during the period of an
22 emergency declaration or other invocation of this [act].

1

2 **SECTION 3. AUTHORIZATION FOR VOLUNTEER HEALTHCARE**

3 **PRACTITIONERS TO PROVIDE HEALTHCARE SERVICES.**

4 (a) This [act] authorizes volunteer healthcare practitioners to provide healthcare services

5 in this state during the time an emergency declaration is in effect.

6 (b) This [act] authorizes volunteer healthcare practitioners to provide healthcare services

7 in this state if the [*name of appropriate agency or agencies*] determines that the services of

8 volunteer healthcare practitioners are necessary within this state to respond to nonemergency

9 circumstances at a local, regional, or state-wide level, including the care of victims of

10 emergencies evacuated or displaced from other states or the conduct of activities necessary to

11 prepare for an anticipated or threatened emergency. The person who invokes this act under this

12 subsection must terminate its invocation upon determining that the circumstances or conditions

13 that justified the invocation no longer exist. This [act] may not be invoked under this subsection

14 to the extent the invocation overlaps with an existing or subsequently issued emergency

15 declaration under subsection (a).

16 (c) During the period of an emergency declaration or other invocation of this [act], the

17 [*name of appropriate agency or agencies*] may issue orders limiting, restricting, or regulating (1)

18 the duration of practice by volunteer healthcare practitioners, (2) the geographical areas in which

19 volunteer healthcare practitioners may practice, (3) the class of volunteer healthcare practitioners

20 who may practice, and (4) any other matters as necessary to coordinate effectively the provision

21 of healthcare services.

22

1

2 **SECTION 4. VOLUNTEER HEALTHCARE PRACTITIONER REGISTRATION**
3 **SYSTEMS.**

4 (a) This [act] applies only to volunteer healthcare practitioners registered as volunteers
5 with:

6 (1) an ESAR-VHP or MRC;

7 (2) a similar registration system operated by a disaster relief organization,
8 licensing board, association of licensing boards or healthcare professionals, comprehensive
9 healthcare facility, or governmental entity; or

10 (3) a system approved pursuant to subsection (b).

11 (b) The [*name of appropriate agency or agencies*] may designate systems other than
12 those set forth in subsection (a) and extend to volunteer healthcare practitioners registered with
13 them the protections and privileges of this [act]. No system may be so designated unless it
14 facilitates the registration of volunteer healthcare practitioners prior to the time their services
15 may be needed.

16 (c) During the period of an emergency declaration or other invocation of this [act], the
17 [*name of appropriate agency or agencies*] or a person or persons authorized to act on behalf of
18 the [*agency or agencies*], may confirm whether volunteer healthcare practitioners utilized in this
19 state are entitled to the protections of this [act]. If required, confirmation is limited to
20 determining the identities of volunteer healthcare practitioners who are registered and in good
21 standing with a system described in subsection (a) or approved pursuant to subsection (b).

22 (d) The [*name of appropriate agency or agencies*] shall establish procedures in advance

1 for the efficient confirmation of volunteer healthcare practitioners during the period of an
2 emergency declaration or other invocation of this [act].

3 **SECTION 5. INTERSTATE LICENSURE RECOGNITION FOR VOLUNTEER**
4 **HEALTHCARE PRACTITIONERS.**

5 (a) If a volunteer healthcare practitioner authorized to provide healthcare services in this
6 state by this [act] is licensed and in good standing in another state, this state shall recognize the
7 out-of-state license as if the license had been issued by this state during the period of an
8 emergency declaration or other invocation of this [act].

9 (b) This [act] does not affect any requirement that a healthcare entity may have
10 concerning credentialing and privileging standards, nor does it preclude a healthcare entity from
11 waiving or modifying such standards during the period of an emergency declaration or other
12 invocation of this [act].

13 **SECTION 6. PROVISION OF VOLUNTEER HEALTHCARE SERVICES.**

14 (a) A volunteer healthcare practitioner, including a practitioner licensed in another state
15 and authorized to provide healthcare services in this state pursuant to this [act], must adhere to
16 the normal scope of practice and standard of care established by the licensing provisions or other
17 laws or policies of this state.

18 (b) The [*name of appropriate agency or agencies*] may modify, restrict or enlarge the
19 normal scope of practice or standard of care for volunteer healthcare practitioners practicing in
20 this state pursuant to this act.

21 (c) A host entity may limit, restrict, or modify the types of services that a volunteer
22 healthcare practitioner may provide pursuant to this [act] as long as the limitation, restriction, or

modification is consistent with the scope of practice or standard of care as provided in subsections (a) and (b).

(d) A volunteer healthcare practitioner who in good faith provides healthcare services consistent with subsections (a), (b), and (c) shall not be subject to administrative sanctions for unauthorized practice.

(e) A volunteer healthcare practitioner who is licensed in another state, is unaware of a limitation on the scope of practice in this state, and who in good faith provides healthcare services consistent with the practitioner's normal scope of practice shall not be subject to administrative sanctions for unauthorized practice.

(f) In determining whether to impose administrative sanctions for conduct outside the scope of practice and for which the volunteer healthcare practitioner is not subject to administrative sanctions under subsections (d) and (e), a licensing board or other disciplinary authority shall consider the nature of the exigent circumstances in which the actions took place.

[SECTION 7. CIVIL IMMUNITY FOR VOLUNTEER HEALTHCARE PRACTITIONERS; NO VICARIOUS LIABILITY.]

(a) Subject to subsections (d) and (e), volunteer healthcare practitioners authorized to provide healthcare services by this [act] are not liable for civil damages arising out of such services provided during the period of the emergency declaration or other invocation of this [act].

(b) Subject to subsections (d) and (e), volunteer healthcare practitioners authorized to provide healthcare services by this [act] are not liable for civil damages for nonhealthcare-related acts performed within the scope of their activities as volunteer healthcare practitioners during the

1 period of the emergency declaration or other invocation of this [act].

2 (c) Source, coordinating, and host entities are not vicariously liable for damages arising
3 out of actions for which volunteer healthcare practitioners are not liable under subsections (a),
4 (b) and (c).

5 (d) Subsections (a), (b), and (c) shall not apply to (1) the willful, wanton, grossly
6 negligent, reckless, or criminal conduct of a volunteer healthcare practitioner during the period
7 of an emergency declaration or other invocation of this [act]; and (2) an action (A) for damages
8 for breach of contract, or (B) brought against the practitioner by a source or host entity.]

9 **[SECTION 8. WORKERS' COMPENSATION COVERAGE.**

10 **Option A**

11 Unless the volunteer healthcare practitioner is covered by workers' compensation insurance (or
12 other insurance providing comparable benefits) provided by a coordinating, host, or source
13 entity, or other person, a practitioner who resides in this state and who provides healthcare
14 services in this or another state during the period of an emergency declaration or other invocation
15 of this [act] or another state's similar [act] shall be considered an employee of this state for
16 purposes of workers' compensation coverage.

17 **Option B**

18 Unless the volunteer healthcare practitioner is covered by workers' compensation insurance (or
19 other insurance providing comparable benefits) provided by a coordinating, host, or source
20 entity, or other person, a practitioner who provides healthcare services in this state during the
21 period of an emergency declaration or other invocation of this [act] shall be considered an
22 employee of this state for purposes of workers' compensation coverage.

1

2 **SECTION 9. EFFECT OF COMPENSATION ON VOLUNTEER STATUS.**

3 (a) A prospective, concurrent, or retroactive provision of monetary or any other
4 compensation to a healthcare practitioner by any person for providing healthcare services during
5 the period of an emergency declaration or other invocation of this [act] does not preclude the
6 practitioner from being considered a volunteer healthcare practitioner under this [act], unless
7 such compensation is pursuant to the preexisting employment relationship with the host entity in
8 this state.

9 [(b) The prohibition upon a preexisting employment relationship in subsection (a) shall
10 not apply to (1) a healthcare practitioner who is not a resident of this state and is employed by a
11 disaster relief organization providing services in this state pursuant to this act; or (2) a healthcare
12 practitioner who is not a resident of this state who volunteers for deployment to this state to
13 provide healthcare services at a healthcare facility or organization affiliated with the healthcare
14 practitioner's place of employment during an emergency or period of time in which this [act] is
15 invoked, provided the healthcare practitioner's compensation does not exceed the practitioner's
16 customary and usual compensation.]

17 *[Reporter's Note: Subsection (b) needs additional work. The major idea is to neatly distinguish*
18 *between volunteer healthcare practitioners and existing employees of healthcare or other entities*
19 *with certain exceptions. Subsection (b) provides 2 exceptions in response to comments from*
20 *participants at the first Drafting Committee, but these remain tentative based on additional*
21 *input and guidance].*
22

23 **SECTION 10. RELATION TO OTHER LAWS.** Nothing in this [act] is intended to
24 limit additional protections from liability or other benefits for volunteer healthcare practitioners
25 provided by laws other than this [act] or to establish requirements for the use of volunteer

1 healthcare practitioners used in this state pursuant to EMAC.

2 **SECTION 11. REGULATORY AUTHORITY.** The [*name of appropriate state*
3 *agency or agencies*] [is] [are] authorized to promulgate regulations to implement the provisions
4 of this [act]. In doing so, the [*name of appropriate state agency or agencies*] shall consult with,
5 and consider the recommendations of the entity established to coordinate the implementation of
6 EMAC and shall also consult with, and consider the regulations promulgated by, similarly
7 empowered agencies in other states to promote uniformity of application of this act and thereby
8 make the emergency response systems in the various states reasonably compatible.

9 **SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
10 applying and construing the provisions of this [act], consideration must be given to the need to
11 promote uniformity of the law with respect to its subject matter among states that enact it.

12 **SECTION 13. SEVERABILITY.** The provisions of this [act] are severable. If any
13 provision of this [act] or its application to any person or circumstance is held invalid, such does
14 not affect other provisions or applications of this [act] which can be given effect without the
15 invalid provision or application.