

D R A F T  
FOR DISCUSSION ONLY

# **UNIFORM INTERSTATE EMERGENCY HEALTHCARE SERVICES ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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For April 2006 Drafting Committee Meeting

*WITH PREFATORY NOTE AND WITHOUT COMMENTS*

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April 21, 2006

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HEALTHCARE SERVICES ACT**

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**UNIFORM INTERSTATE EMERGENCY  
HEALTHCARE SERVICES ACT**

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# **UNIFORM INTERSTATE EMERGENCY 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 went ahead and treated 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 health personnel. 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 49 states (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 health personnel, into emergency responses.

Specifically concerning the deployment and use of volunteer health personnel 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;
- A 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 Interstate Emergency Healthcare Services Act (UIEHSA) provides model legislative language to facilitate organized response efforts among volunteer health professionals. UIEHSA's provisions address the following:

- The specific kinds of volunteer health personnel covered;
- Application of its coverage to officially-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 health personnel in other states for the duration of an emergency or invocation of the Act;
- Removal of any disciplinary sanctions or liability against volunteer health personnel, or those who employ, deploy, or supervise them;
- Limitations on the exposure to tort claims against volunteers;
- Worker's compensation protections for volunteer health personnel; and
- Reemployment protections for volunteer health personnel.

### **Legislative Notes**

*To be provided.*

1           **UNIFORM INTERSTATE EMERGENCY HEALTHCARE SERVICES ACT**

3           **SECTION 1. SHORT TITLE**

4           **Option 1:** This [act] may be cited as the Uniform Interstate Emergency Healthcare  
5 Services Act.

6           **Option 2:** This [act] may be cited as the Uniform Emergency Volunteer Healthcare  
7 Services Act.

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

9           (1) “**Coordinating entity**” means any entity that acts as a liaison to facilitate  
10 communication and cooperation between source and host entities, but does not provide any  
11 healthcare services in the course of its assistance.

12           (2) “**Credentialing**” means obtaining, verifying, and assessing the qualifications of a  
13 healthcare practitioner to provide patient care, treatment, and services in or for a healthcare  
14 organization.

15           (3) “**Emergency**” means any emergency, disaster, or public health emergency (or like  
16 term) as defined by the State or any of its authorized local governments.

17           (4) “**Emergency Management Assistance Compact (EMAC)**” refers to the mutual aid  
18 agreement ratified by Congress and signed into law in 1996 as Public Law 104-321, and  
19 subsequently enacted by the State (*insert specific State code reference*).

20           (5) “**Emergency Systems for Advance Registration of Volunteer Health**  
21 **Professionals (ESAR-VHP)**” means that State-based program created with funding through the  
22 Health Resources Services Agency (HRSA) under Section 107 of the federal Public Health



1 Security and Bioterrorism Preparedness and Response Act of 2002 to facilitate the effective use  
2 of volunteer health professionals during emergencies.

3 (6) “**Entity**” means any an institution, company, partnership, government agency, or  
4 other organization, as distinguished from individuals.

5 (7) “**Healthcare services**” means the provision of care, services, or supplies related to the  
6 health of an individual, including (1) preventive, diagnostic, therapeutic, rehabilitative,  
7 maintenance, or palliative care, counseling, service, assessment, or procedure with respect to the  
8 physical or mental condition, or functional status, of an individual or that affects the structure of  
9 function of the body; and the (2) sale or dispensing of a drug, device, equipment, or other item to  
10 individuals in accordance with a prescription.

11 (8) “**Host entity**” means any entity that receives and permits volunteer health personnel  
12 to provide healthcare services during an emergency.

13 (9) “**Individual**” means any natural person or human being.

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

17 (11) “**Medical Reserve Corps (MRCs)**” means those local units consisting of trained  
18 and equipped emergency response, public health, and medical personnel, pursuant to Section  
19 2801 (b)(2)(c) of the Public Health Security and Bioterrorism Preparedness and Response Act of  
20 2002, whose purpose is to ensure that State and local governments have appropriate capacity to  
21 detect and respond effectively to an emergency.

22 (12) “**Person**” means an individual, corporation, partnership, association, public

1 corporation, agency, or other legal or commercial entity.

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

6 (14) “**Scope of practice**” means those services routinely performed by a healthcare  
7 practitioner consonant with the requisite education, training, and specialized judgment pursuant  
8 to the laws of the State of the host entity.

9 (15) “**Source entity**” means any entity with whom volunteer health personnel are  
10 employed or affiliated and from which they are subsequently deployed.

11 (16) “**Standard of care**” means the reasonable diligence, skill, and competence as  
12 employed by health practitioners in the same capacity or general field of practice who have  
13 available to them the same general facilities, equipment, and options to provide appropriate care  
14 or treatment, pursuant to the laws of the State of the host entity.

15 (17) “**State**” means any of the fifty (50) states comprising the United States, the District  
16 of Columbia, Puerto Rico, the Virgin Islands, an Indian tribe or band, or any territory subject to  
17 the jurisdiction of the United States.

18 (18) “**Volunteer health personnel**” means any physician, nurse, physician assistant, or  
19 other healthcare practitioner who provides healthcare services during an emergency or the  
20 invocation of the [act] based on his or her own free will. Volunteer health personnel do not  
21 include employees of a host entity.

1           **SECTION 3. ACTIVATION OF VOLUNTEER HEALTH PERSONNEL.**

2           **(a) Effect of Emergency Declaration.** The declaration of a state or emergency by the  
3 State or authorized local governments shall activate the emergency provisions of this [act],  
4 effectively authorizing the deployment and use of volunteer health personnel to affected area(s).

5           **(b) Specific Authorization Pursuant to Declaration.** Whoever is authorized to declare  
6 the state of emergency in (a) above is also authorized to implement and enforce the provisions of  
7 this [act] or delegate these responsibilities to other appropriate individuals or entities consistent  
8 with legal authorization during the emergency. The power to implement or enforce the  
9 provisions of this [act] shall extend throughout the duration of the emergency.

10          **(c) Invocation Without an Emergency Declaration.** The provisions of this [act] may  
11 also be invoked by any State or local government official (who is authorized to declare a state of  
12 emergency) without declaring a state of emergency if the deployment and use of volunteer health  
13 personnel are necessary to provide essential healthcare services in non-emergency  
14 circumstances at the local, regional, or state-wide levels. In such cases, the State or local official  
15 who invokes this [act] shall also be empowered to (1) act consistent with the powers under (b),  
16 above; and (2) terminate the invocation of the [act].

17           **SECTION 4. VOLUNTEER HEALTH PERSONNEL SYSTEMS.**

18          **(a) Organized Systems to Deploy and Use Volunteer Health Personnel.** Relevant  
19 protections and privileges of this [act] shall apply to any volunteer health personnel who is  
20 registered through organized systems of volunteers providing healthcare services, including State  
21 ESAR-VHP systems, local MRCs, or other approved systems developed by associations of  
22 licensing boards, healthcare professionals, or disaster relief organizations.

1           **(b) Designation of Organized Systems.** The [*State emergency management agency,*  
2    *State public health agency, State medical licensing board*] is authorized via administrative  
3    regulations to designate those systems whose registered volunteers shall be entitled to the  
4    protections and privileges of this [act]. The agency shall only include systems that serve to  
5    facilitate the registration of volunteer health personnel prior to their authorization to provide  
6    healthcare services.

7           **(c) Registries of Volunteer Health Personnel During Emergencies.** The identities of  
8    registered volunteer health personnel in other states shall be verified through (1) notification of  
9    status to the appropriate volunteer systems administrators; or (2) registration within the host state  
10   through a designated volunteer health personnel registration system pursuant to (b) above.

11          **(d) Procedures to Determine Suitability of Volunteers.** The [*State emergency*  
12    *management agency, State public health agency, State medical licensing board*] shall create  
13    procedures via administrative regulations in consultation with representatives of volunteer  
14    organization systems identified in Section 3 to efficiently identify volunteer healthcare personnel  
15    during an emergency or the invocation of this [act].

16           **SECTION 5. INTERSTATE LICENSURE RECOGNITION FOR VOLUNTEER**  
17    **HEALTH PERSONNEL.**

18          **(a) Licensing Recognition.** Whenever a state of emergency has been declared or the  
19    provisions of this [act] are invoked, out-of-state volunteer health personnel who are (1) actively  
20    licensed for the practice of healthcare services in their state; and (2) in good standing as to  
21    licensing status, shall have their licenses recognized as valid in the State for the purposes of their  
22    provision of healthcare services. The volunteer health personnel's license shall be recognized for

1 the purposes of providing healthcare services as if it is issued in the State.

2 (b) **Credentialing and Privileging.** Recognition of an out-of-state volunteer health  
3 personnel's license and the authority to provide healthcare services does not displace the role of  
4 healthcare entities to independently examine credentialing and privileging standards pertaining to  
5 volunteer health personnel in specific healthcare settings.

6 (c) **Practice Consistent with the Scope of Licensure.** Any volunteer health personnel,  
7 including out-of-state volunteer health personnel who are authorized to provide healthcare  
8 services in the State pursuant to this Section, shall adhere to the scope of practice and standards  
9 of care set forth in licensing provisions or other laws or policies of this State. Any deviation from  
10 the normal scope of practice and standards by volunteer health personnel during emergency  
11 responses must be reasonably consistent with modifications promulgated or approved by an  
12 authorized official of the State or local government.

13 (d) **Waiver of Disciplinary Sanctions.** Disciplinary sanctions may be waived or  
14 modified, in whole or in part, for volunteer health personnel acting within the scope of this [act].

15 **SECTION 6. CIVIL IMMUNITY FOR VOLUNTEER HEALTH PERSONNEL**  
16 **AND ENTITIES.**

17 (a) **Immunity from Civil Damages for Provision of Healthcare Services.** Volunteer  
18 health personnel authorized to provide healthcare services pursuant to Section 5 of this [act] are  
19 immune from civil damages arising out of such provision for the duration of the emergency or  
20 invocation of this [act].

21 (b) **Immunity from Civil Damages for Provision of Other Services.** Volunteer health  
22 personnel authorized to provide healthcare services pursuant to Section 5 of this [act] are also

1 immune from civil damages for their nonhealth-related acts performed within the scope of their  
2 activities as volunteer health personnel for the duration of the emergency or invocation of this  
3 [act].

4 **(c) Immunity from Vicarious Liability for Source, Coordinating, or Host Entities.**

5 Source, coordinating, or host entities are immune from vicarious liability arising out of the  
6 performance of all healthcare services and nonhealth-related acts by volunteer health personnel  
7 for the duration of the emergency or invocation of this [act].

8 **(d) Immunity Exception for Willful, Wanton, or Criminal Conduct.** No volunteer  
9 health personnel or entity is immune under this [act] for willful, wanton, or criminal conduct that  
10 arises during the duration of the emergency or invocation of this [act].

11 **SECTION 7. WORKERS' COMPENSATION COVERAGE FOR VOLUNTEER**  
12 **HEALTH PERSONNEL.** Volunteer health personnel shall be afforded protection from harms  
13 that arise within the scope of their activities through workers' compensation coverage for the  
14 duration of the emergency or invocation of this [act] as follows:

15 **(a) Option A - Volunteer Health Personnel as State Agents in Jurisdiction of**  
16 **Deployment.** Volunteer health personnel who provide healthcare services shall be considered  
17 state agents of the jurisdiction from which they were deployed and afforded workers'  
18 compensation coverage like any state government employee of the jurisdiction.

19 **(b) Option B - Volunteer Health Personnel as State Agents in Jurisdiction of Service.**  
20 Volunteer health personnel who provide healthcare services shall be considered state agents of  
21 the jurisdiction in which they served as volunteers and afforded worker's compensation coverage  
22 like any state government employee of the jurisdiction.

1           **(c) Option C - Volunteer Health Personnel Entitled to Existing Workers'**

2   **Compensation Protection through Employer.** Volunteer health personnel who provide  
3   healthcare services shall be considered employees of their existing employer, and thus entitled to  
4   existing workers' compensation protections through this employer.

5           **(d) Option D - Volunteer Health Personnel Responsible for Determining Workers'**

6   **Compensation Coverage.** Volunteer health personnel who provide healthcare services are  
7   responsible for assuring workers' compensation coverage through the jurisdiction from which  
8   they were deployed or served as volunteer, or existing employer.

9           **SECTION 8. REEMPLOYMENT PROTECTIONS FOR VOLUNTEER HEALTH**

10   **PERSONNEL.** Volunteer health personnel who provide healthcare services during an  
11   emergency or pursuant to the invocation of this [act] are entitled to reemployment protections  
12   through their existing employer consistent with those protections of uniformed service personnel  
13   employees pursuant to the terms and conditions of the federal Uniformed Services Employment  
14   and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4301 et seq. The [*State emergency*  
15   *management agency, State public health agency*] is authorized via administrative regulations to  
16   clarify the extent of reemployment protections for volunteer health personnel consistent with this  
17   Section.

18           **SECTION 9. EFFECT OF COMPENSATION ON VOLUNTEER STATUS. A**

19   prospective, concurrent, or retrospective offer or provision of monetary or other compensation to  
20   volunteer health personnel by a coordinating, host, or source entity, or any other person, for the  
21   delivery of healthcare services during an emergency or the invocation of this [act] does not affect  
22   the individual's volunteer status, unless such compensation is pursuant to the preexisting

employment relationship with the host entity.

**SECTION 10. UNAUTHORIZED PRACTICE OF HEALTHCARE SERVICES  
BY VOLUNTEERS DURING EMERGENCIES.**

(a) Any volunteer health personnel or other individual who willfully or fraudulently engages in the unauthorized practice of healthcare services during an emergency or the invocation of this [act] is subject to criminal or civil liability, disciplinary sanctions, or other penalties under the laws or processes of this State and its agents.

(b) Any individual who falsely represents himself or herself to be a volunteer health personnel as defined in this [act] shall be guilty of a [Class A - insert] misdemeanor. Upon conviction, the individual is punishable by a fine not to exceed [\$10,000] or imprisonment not to exceed [9] months, or both.

**SECTION 11. CONFLICTS OF LAWS.** Nothing in this Act is intended to limit additional protections from liability or other benefits for volunteer health personnel found in federal, state, or local laws. In the event of a conflict between this [act] and other state or local laws, the provisions of this [act] apply.

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

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