

UNIFORM EMERGENCY VOLUNTEER HEALTHCARE SERVICES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For the June 26, 2006 Drafting Committee Teleconference

WITH PREFATORY NOTE AND WITHOUT COMMENTS

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ON UNIFORM STATE LAWS

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June 16, 2006

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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 the services provided by private sector healthcare practitioners into disaster relief operations. This includes employees and volunteers of nongovernmental disaster relief organizations who were needed to provide surge capacity in affected areas and to provide timely healthcare services 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. While thousands of healthcare professionals quickly volunteered to provide assistance, 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 healthcare practitioners were not adequately protected against exposure to tort claims or injuries or deaths suffered by the volunteers 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 System for the Advance Registration of Volunteer Health Professionals (ESAR-VHP), or local-based units of the Medical Reserve Corps (MRCs). Other volunteer healthcare practitioners, however, deployed spontaneously to affected areas, complicating response efforts. Some of these volunteers were turned away or used for purely administrative tasks because their out-of-state professional licenses were not recognized, the entities hosting them were concerned about liability, 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.

Rather than treating the injured, sick and infirm, some qualified physicians, nurses and other licensed 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 or administrative penalties or civil liability. Out-of-state practitioners providing medical treatment also faced the real possibility of noncoverage under their medical malpractice policies.

While the magnitude of the emergency presented by Hurricanes Katrina, Rita, and Wilma 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 help meet patient surge capacity and protect the public's health, reliance on private sector health practitioners and nongovernmental 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 healthcare practitioner activities during emergencies. The U.S. Congress continues to examine some of these gaps through the introduction of multiple 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.

As first responders, states (and their local subsidiaries) 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 relief workers (which may include volunteer healthcare practitioners) with protection from civil liability. Every state has ratified the Emergency Management Assistance Compact (EMAC), which provides for licensing reciprocity, relief from civil liability, and workers' compensation protections 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 interstate healthcare licensure recognition in many jurisdictions. However, no uniform provisions have been drafted to date to efficiently incorporate the full resources of volunteer healthcare practitioners into emergency responses.

Concerning the deployment and use of volunteer healthcare practitioners during emergencies, a uniform legal approach among the states presents several key advantages:

- Lacking uniformity, separate state-by-state enactments create inconsistencies and dilemmas in legal authorities or protections 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 uniform legislative language to facilitate organized response efforts among volunteer healthcare practitioners. UEVHSA's provisions address the following:

- Application of its coverage to declared states of emergency, disaster, or public health emergency (or like terms at the state or local level);
- The coverage of volunteer healthcare practitioners who are registered with ESAR-VHP, MRC, or other similar systems and volunteer based on their own volition);
- Procedures to recognize the valid and current licenses of volunteer healthcare practitioners in other states for the duration of an emergency declaration;
- Requirements for volunteer healthcare practitioners to adhere to scope of practice standards during the emergency (subject to modifications or restrictions);
- Removal of significant disciplinary sanctions or civil liability against volunteer healthcare practitioners, or those who employ, deploy, or host them; and
- Workers' 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
6 **SECTION 2. DEFINITIONS.** As used in this [act]:

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

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

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

16 (4) **“Disaster relief organization”** means an entity that provides emergency or disaster
17 relief services that include healthcare or veterinary services provided by volunteer healthcare
18 practitioners and that (A) is designated or recognized as a provider of such services pursuant to a
19 disaster response and recovery plan adopted by the [*name of appropriate agency or agencies*], or
20 (B) conducts its activities in coordination with the [*name of appropriate agency or agencies*].

21 (5) **“Emergency”** means an emergency, disaster, public health emergency or similar
22 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].

Legislative Note: The terms “emergency,” “disaster,” and “public health emergency” are the most commonly used terms to describe the circumstances that may lead to the issuance of an emergency declaration referred to in this [act]. States that use other terminology should consider amending this definition to reflect their terminology.

(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 System for Advance Registration of Volunteer Health Professionals (ESAR-VHP)”** means the state-based program created with funding through the Health Resources Services Administration 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, 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 or estate.

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

(11) **“Healthcare entity”** means an entity that provides healthcare or veterinary services.

(12) **“Healthcare practitioner”** means a person licensed in any state to provide healthcare or veterinary services.

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

8 (14) “**Host entity**” means a healthcare entity, disaster relief organization, or other entity
9 in this state that uses volunteer healthcare practitioners to provide healthcare or veterinary
10 services while an emergency declaration is in effect.

11 (15) “**Individual**” means a natural person.

12 (16) “**License**” means official permission granted by a competent governmental
13 authority to engage in healthcare or veterinary services otherwise considered unlawful without
14 such permission. [The term includes permission granted by the laws of this state to an individual
15 to provide healthcare or veterinary services based upon a national certification issued by a public
16 or private entity.]

17 *[Reporter’s Note: The last sentence is bracketed to signify the need for a policy decision*
18 *for the drafting committee.]*

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

1 (18) **“Person”** means an individual or an entity.

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

6 (20) **“Registration system”** means a system that facilitates the registration of volunteer
7 healthcare practitioners prior to the time their services may be needed and that: (A) includes
8 organized information about the volunteers that is accessible by authorized personnel; and (B)
9 can be used to verify the accuracy of information concerning whether the volunteers are licensed
10 and in good standing.

11 (21) **“Scope of practice”** means the healthcare or veterinary services which a volunteer
12 healthcare practitioner is licensed to perform.

13 (22) **“Source entity”** means a healthcare entity, disaster relief organization, or other
14 entity located in any state that employs or uses the services of healthcare practitioners who
15 volunteer to provide healthcare or veterinary services while an emergency declaration is in
16 effect.

17 (23) **“State”** means a state of the United States, the District of Columbia, Puerto Rico,
18 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
19 of the United States. The term also includes an Indian tribe or nation.

20 (24) **“Veterinary services”** means [the provision of care, services or supplies related to
21 the health or death of animals, including the removal or disposal of dead animals.]

22 *[Reporter’s Note: The definition of veterinary services needs further development based*
23 *on forthcoming input from the American Veterinary Medical Association or others.]*

1 (25) “**Volunteer healthcare practitioner**” means a healthcare practitioner who, as an
2 act of the practitioner’s own volition, provides healthcare or veterinary services in this state
3 while an emergency declaration is in effect.
4

5 **SECTION 3. AUTHORIZATION FOR VOLUNTEER HEALTHCARE**
6 **PRACTITIONERS TO PROVIDE HEALTHCARE SERVICES.**

7 (a) This [act] authorizes volunteer healthcare practitioners to provide healthcare or
8 veterinary services in this state while an emergency declaration is in effect subject to the
9 requirements of this [act].

10 (b) While an emergency declaration is in effect, the [*name of appropriate agency or*
11 *agencies*] may issue orders limiting, restricting, or regulating (1) the duration of practice by
12 volunteer healthcare practitioners, (2) the geographical areas in which volunteer healthcare
13 practitioners may practice, (3) the class or classes of volunteer healthcare practitioners who may
14 practice, and (4) any other matter necessary to coordinate effectively the provision of healthcare
15 or veterinary services.
16

17 **SECTION 4. VOLUNTEER HEALTHCARE PRACTITIONER REGISTRATION**
18 **SYSTEMS.**

19 (a) This [act] applies only to volunteer healthcare practitioners registered as volunteers
20 with a registration system that is:

21 (1) an ESAR-VHP or MRC system;

1 (2) operated by a disaster relief organization, licensing board, association of
2 licensing boards or healthcare practitioners, comprehensive healthcare facility, or governmental
3 entity; or

4 (3) approved pursuant to subsection (b).

5 (b) The [*name of appropriate agency or agencies*] may designate registration systems
6 other than those set forth in subsections (a)(1) and (2) and extend to volunteer healthcare
7 practitioners registered with them the protections and privileges of this [act].

8 (c) While an emergency declaration is in effect, the [*name of appropriate agency or*
9 *agencies*], or a person or persons authorized to act on behalf of the [*agency or agencies*], may
10 confirm whether volunteer healthcare practitioners utilized in this state are registered with a
11 registration system. Confirmation is limited to determining the identities of the volunteer
12 healthcare practitioners and whether they are in good standing with the system.

13 (d) The [*name of appropriate agency or agencies*] may establish procedures for the
14 efficient confirmation of volunteer healthcare practitioners pursuant to subsection (c).

15
16 **SECTION 5. INTERSTATE LICENSURE RECOGNITION FOR VOLUNTEER**
17 **HEALTHCARE PRACTITIONERS.**

18 (a) While an emergency declaration is in effect, a volunteer healthcare practitioner
19 licensed and in good standing in another state may practice in this state as if the person had been
20 licensed in this state.

21 (b) This [act] does not affect credentialing and privileging standards of a healthcare
22 entity, nor does it preclude a healthcare entity from waiving or modifying such standards while

an emergency declaration is in effect.

SECTION 6. PROVISION OF VOLUNTEER HEALTHCARE SERVICES.

(a) [Subject to subsection (d), a] [A] volunteer healthcare practitioner, including a practitioner licensed in another state and authorized to provide healthcare or veterinary services in this state pursuant to this [act], must adhere to the scope of practice established by the licensing provisions, practice acts, or other laws of this state.

(b) The [*name of appropriate agency or agencies*] may modify or restrict the scope of practice for volunteer healthcare practitioners practicing in this state pursuant to this [act] while an emergency declaration is in effect.

(c) A host entity may restrict the types of services that a volunteer healthcare practitioner may provide pursuant to this [act] while an emergency declaration is in effect.

[(d) Nothing in this [act] authorizes a volunteer healthcare practitioner to provide healthcare or veterinary services that are outside the practitioner's scope of practice in any of the other states in which the practitioner is licensed and in good standing.]

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

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

1 [(g) In the case of conduct of a volunteer healthcare practitioner for which the
2 practitioner is not protected under subsections [(e) and (f)] [(d) and (e)], a licensing board or
3 other disciplinary authority in this state:

4 (1) may impose administrative sanctions if the practitioner is licensed in this state
5 without regard to the state in which the conduct occurs;

6 (2) may impose administrative sanctions if the practitioner is not licensed in this
7 state and the conduct occurs in this state; and

8 (3) must report any administrative sanctions to the appropriate licensing board or
9 other disciplinary authority in any other state in which the practitioner is known to be licensed.]

10 (h) In determining whether to impose administrative sanctions under subsection (g), a
11 licensing board or other disciplinary authority shall consider the nature of the exigent
12 circumstances in which the conduct took place and the practitioner's education, training,
13 experience, and specialized judgment.

14 *[Reporter's Note: Sections 6(d) and 6(g) are bracketed to signify the need for policy*
15 *decisions for the drafting committee.]*

16
17 **SECTION 7. NO LIABILITY FOR VOLUNTEER HEALTHCARE**
18 **PRACTITIONERS; EXCEPTIONS; NO VICARIOUS LIABILITY.**

19 (a) Subject to subsection (b), volunteer healthcare practitioners authorized to provide
20 healthcare or veterinary services pursuant to this [act] while an emergency declaration is in effect
21 are not liable for civil damages for acts or omissions within the scope of their responsibilities as
22 volunteer healthcare practitioners.

23 (b) Subsection (a) does not apply to: (1) willful, wanton, grossly negligent, reckless, or

1 criminal conduct of, or an intentional tort committed by, a volunteer healthcare practitioner; (2)
2 an action brought against a volunteer healthcare practitioner (A) for damages for breach of
3 contract, (B) by a source or host entity, or (C) the operation of a motor vehicle, vessel, aircraft,
4 or other vehicle by a volunteer healthcare practitioner for which this state requires the operator to
5 have a valid operator's license or to maintain liability insurance.

6 (c) Source, coordinating, and host entities are not vicariously liable for the acts or
7 omissions of volunteer healthcare practitioners while an emergency declaration is in effect.
8

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

10 If a volunteer healthcare practitioner who is deployed to this state while an emergency
11 declaration is in effect is not covered by workers' compensation insurance provided by a source,
12 coordinating, or host entity, or by another person, or the practitioner is not covered by other
13 insurance providing comparable benefits, the practitioner shall be considered an employee of this
14 state for purposes of workers' compensation coverage.
15

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

17 (a) The prospective, concurrent, or retroactive provision of monetary or other
18 compensation to a healthcare practitioner by any person for the provision of healthcare or
19 veterinary services while an emergency declaration is in effect does not preclude the practitioner
20 from being a volunteer healthcare practitioner under this [act] unless the compensation is
21 provided pursuant to a preexisting employment relationship with the host entity that requires the
22 practitioner to provide healthcare or veterinary services in this state.

(b) This section does not apply to a healthcare practitioner who is not a resident of this state and who is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

SECTION 10. RELATION TO OTHER LAWS.

[(a)] This [act] does not limit protections from liability or other benefits provided to volunteer healthcare practitioners by laws other than this [act], nor does it establish requirements for the use of volunteer healthcare practitioners in this state pursuant to EMAC.

[(b) The *[name of appropriate agency or agencies]* may incorporate into state forces used to respond to emergencies through EMAC a volunteer healthcare practitioner who is not an employee of this state, a political subdivision of this state, or a municipality or other local government within this state.]

Legislative Note: References to other emergency assistance compacts to which the state is a party should be added.

SECTION 11. REGULATORY AUTHORITY. The *[name of appropriate state*

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

1 **SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

2 applying and construing the provisions of this [act], consideration must be given to the need to
3 promote uniformity of the law with respect to its subject matter among states that enact it.

4
5 **SECTION 13. SEVERABILITY.** The provisions of this [act] are severable. If any
6 provision of this [act] or its application to any person or circumstance is held invalid, such does
7 not affect other provisions or applications of this [act] which can be given effect without the
8 invalid provision or application.