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Legal and Regulatory Issues Concerning Volunteer Health Professionals in Emergencies

UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT (UEVHPA): AN OVERVIEW

Introduction. As of August, 2007, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has approved the Uniform Emergency Volunteer Health Practitioners Act (UEVHPA).¹ The Act facilitates the deployment and use of volunteer health practitioners to provide health and veterinary services in response to a declared disaster or emergency. The primary purposes of the Act are to:

- establish a system for the use of volunteer health practitioners capable of functioning autonomously even when routine methods of communication are disrupted;
- provide reasonable safeguards to assure that volunteer health practitioners are appropriately licensed and regulated to protect the public's health; and
- allow states to regulate, direct and restrict the scope and extent of services provided by volunteer health practitioners to promote disaster recovery operations.

Unlike many mutual aid agreements and interstate compacts, the Act offers a number of unique provisions to facilitate an organized and efficient response effort. These include:

- defining 'volunteers' to include compensated and uncompensated individuals, recognizing that the provision of monetary compensation is

¹ The full text of the Act is available at <http://www.uevhp.org/DesktopDefault.aspx?tabindex=1&tabid=55> (last accessed January 23, 2008).

- not a dispositive factor to negate an individual's contributions;
- requiring pre-deployment registration in a recognized system to facilitate subsequent deployment and streamlining of volunteers to a disaster site;
- enabling public- and private sector volunteers to avail themselves of its benefits and protections; and
- regulating the provision of services, subject to the modifications that may be proffered by the state administrator of an emergency response program.

As of January 2008, state officials in numerous jurisdictions have introduced or enacted the Act, or portions thereof, in subsequent legislative sessions.² Additional legislative enactment efforts of UEHVPA, which includes the added uniform provisions on civil liability and workers compensation coverage continue in 2008.

The following summary is intended to provide a brief overview of the Act and its relevant portions, consistent with the information provided above.

UEVHPA – A Brief Overview

Section 1: Title – The Uniform Emergency Volunteer Health Practitioners Act

Section 2: Definitions and Legislative Notes

- “Volunteer health practitioner” means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. The term does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

Section 3: Applicability to Volunteer Health Practitioners

- The Act applies to all volunteer health practitioners (VHPs) who provide health or veterinary services for a host entity during a declared emergency. All VHPs must be registered with a recognized registration system. This section authorizes VHPs to provide services for the duration of the emergency so long as all registration and compliance requirements are met.

Section 4: Regulation of Services during Emergency

² Comprehensive updates are available at <http://www.uevhpa.org/DesktopDefault.aspx?tabindex=2&tabid=56> (last accessed January 23, 2008).

- While an emergency is in effect, appropriate government agencies may restrict or limit the duration of service, as well as the area in which VHPs may practice. The government agencies may also place restrictions on the types of VHPs used.
- A host entity shall consult with the agency responsible for managing the emergency response to ensure that VHPs are being utilized in the most effective and efficient way. The laws of the host state shall govern management of all VHPs that provide healthcare or veterinary services.

Section 5: Volunteer Health Practitioner Registration Systems

- A qualified registration system must: 1) accept volunteer applications before or during an emergency; 2) have information about the good standing of health practitioners which can be accessed by authorized personnel; and 3) be capable of confirming information about the good standing of health practitioners.
- The registration system must also either: 1) be an emergency system for advance registration of volunteer health practitioners established by a state and funded through the Health Resources Services Administration; 2) be a local unit of trained and equipped emergency response, medical, or public health personnel; 3) be operated by a licensing board, governmental entity, health facility, or disaster relief organization; or 4) be designated as a registration system by an appropriate governmental agency.
- The Act does not require or authorize a state to designate or approve registration systems.

Section 6: Recognition of Volunteer Health Practitioners Licensed in Other States

- A VHP who is registered with a recognized registration system may practice in the host state as if he were licensed in that state. Although a practitioner may retain licenses among multiple states, the laws of the host state govern the provisions of services within the host state.

Section 7: No Effect on Credentialing and Privileging

- The Act does not affect the credentialing or privileging standards of a health facility, nor does it preclude the facility from waiving or modifying standards during a declared emergency.

Section 8: Provision of Volunteer Health or Veterinary Services; Administrative Sanctions

- VHPs must adhere to the scope of practice for similarly licensed practitioners from the host state. Also, a host entity may restrict or modify the activities of VHPs for the duration of the declared emergency.
- A licensing board may impose administrative sanctions where a VHP consciously engages in unauthorized practice.

Section 9: Relation to Other Laws – this Act does not limit the rights, privileges, or immunities provided to volunteer health practitioners by other laws.

Section 10: Regulatory Authority – this section authorizes States to adopt regulations that are reasonably necessary to implement the provisions of this Act. Additionally, States may utilize regulatory authority to establish standards to promote the interoperability of registration systems.

Section 11: Civil Liability for Volunteer Health Practitioners; Vicarious Liability – this section provides two alternative schemes for limiting liability of VHPs and those individuals or entities who could potentially be liable for the actions and omissions of VHPs.

Alternative A:

- Under this alternative, VHPs are not liable for their actions or omissions while providing services during an emergency. This provision does not apply to VHPs engaged in willful, wanton, or grossly negligent acts. Nor does it apply to criminal conduct, intentional torts, breach of contract, or acts and omissions relating to the operation of vehicles.
- A second notable element of this alternative concerns vicarious liability. In some instances, individuals or entities other than the VHP can be secondarily liable for the actions and omissions of the volunteers themselves. Under this alternative, when a VHP is protected from liability under the act, no individual or entity can be held liable for the actions or omissions of that VHP.

Alternative B:

- This alternative provides the same type of protection for VHPs against liability for actions or omissions, but only extends that protection to VHPs who receive compensation of \$500 or less per year for providing health or veterinary services pursuant to the act. Reimbursement for reasonable expenses and continuation of salary while on leave are not considered compensation.
- As with Alternative A, this alternative does not apply to VHPs engaged in willful, wanton, or grossly negligent acts. Nor does it apply to criminal conduct, intentional torts, breach of contract, or acts and omissions relating to the operation of vehicles.
- This alternative also differs significantly with respect to vicarious liability because it does not extend liability protection to those that use and employ VHPs. Thus, under this alternative, even if a VHP is protected from liability by the act,

another person or institution could be held liable for the VHPs' actions or omissions.

Section 12: Workers' Compensation

- A VHP who dies or is injured as the result of providing health or veterinary services in a particular state may not have access to worker's compensation benefits because of his volunteer status. As a result, this section allows a VHP to choose to be deemed an employee of the state in which he provides services for the purpose of receiving workers' compensation benefits. Injury is defined in accordance with how the host state defines it under that state's workers' compensation laws.

Section 13: Uniformity of Application and Construction

Consideration must be given to the need to promote uniformity of the law among states that enact this Act.