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MEMORANDUM

Hurricane Katrina Response

Legal Issues Regarding the Use of Volunteer Health Personnel in Response Efforts: Frequently Asked Questions

As part of the response to Hurricane Katrina, volunteer health professionals (VHPs) from around the country have offered to provide medical assistance in Alabama, Louisiana, and Mississippi. Many are responding through organized governmental and private sector response efforts and others arrive spontaneously. The participation of VHPs in the response efforts gives rise to several legal and regulatory issues. The *Center for Law and the Public's Health (Center)* has been contacted by numerous local, state, federal and private participants in the emergency response efforts for guidance regarding the resolution of these issues. As a result, the *Center* has drafted a set of frequently asked questions [FAQs] that detail the responses to some of the most pressing legal concerns about the use of VHPs in the Hurricane Katrina response efforts. The questions addressed in this memorandum include:

1. **What legal protections are available for VHPs in Alabama, Louisiana, and Mississippi relating to their participation in emergency response efforts?**
2. **What legal protections are available for VHPs in states which are providing assistance to the Katrina evacuees, including Arkansas, Kentucky and South Carolina?**
3. **Where can I find information regarding the federal legal protections available to VHPs participating in emergency response efforts?**
4. **Where can I find information about volunteering to participate in the Hurricane Katrina response efforts?**
5. **How are local assets incorporated into a response efforts governed by the Emergency Management Assistance Compact (EMAC)?**
6. **How will the HIPAA Privacy Rule effect the sharing of protected health information (PHI) during the response efforts?**
7. **What legal protections will be available for volunteers participating in response efforts through their state's Emergency System for the Advance Registration of Volunteer Health Professionals (ESAR-VHP)?**
8. **Where can I find more information about the legal and regulatory issues associated with volunteer participation in emergency response efforts?**
9. **Can the federal government utilize state emergency management resources under EMAC?**

10. Can the federal government take state resources for purposes of disaster relief without the state's consent?
11. Which system of deployment gives volunteer health personnel greater liability protection, acceptance of licensure, access to compensation, etc., EMAC or federal deployment under ESF-8?
12. Can volunteer health personnel who are designated as "non-paid temporary Federal employees," receive compensation from his or her regular employer while performing volunteer disaster response services on behalf of the Department of Health and Human Services?

Disclaimer - This information does not represent the official legal positions of federal, state, or local governments nor is it meant to provide specific legal guidance or advice. VHPs and their coordinators should contact their local, state or territorial legal advisors for specific legal guidance.

1. **QUESTION: What legal protections are available for VHPs in Alabama, Louisiana, and Mississippi relating to their participation in emergency response efforts?**

ANSWER: A variety of legal protections may be available to VHPs in Alabama, Louisiana, and Mississippi, depending on the nature of the applicable state laws, including malpractice liability protection, workers' compensation coverage, waivers of licensure requirements, and reemployment protections. In response to the current and impending use of VHPs in the Gulf Coast region impacted most significantly by Hurricane Katrina, the *Center* has prepared an initial brief summary table of key legal data and statutory citations concerning protections for VHPs for each of the three states, which is available at www.publichealthlaw.net/Research/Katrina.htm (see Table 1).

2. **QUESTION: What legal protections are available for VHPs in states which are providing assistance to the Katrina evacuees, including Arkansas, Kentucky and South Carolina?**

ANSWER: In addition to requiring the assistance of volunteer health professionals in the Gulf State Region, the response to Hurricane Katrina has drawn upon volunteer resources in many other states which are providing assistance to the Katrina evacuees, including Arkansas, Kentucky and South Carolina. The VHPs in these states will face similar legal issues to those in the Gulf State region, including the need for licensure waivers, liability protection, reemployment protection, and workers' compensation coverage. In response to the current and impending use of VHPs in these states, the *Center* has prepared an initial brief summary table of key legal data and statutory citations concerning protections for VHPs for each of the three states, which can be found at www.publichealthlaw.net/Research/Katrina.htm (see Table 2).

3. **QUESTION: Where can I find information regarding the federal legal protections available to VHPs participating in emergency response efforts?**

ANSWER: A variety of legal protections may be available to federalized VHPs participating in the response to Hurricane Katrina. The availability of these legal protections is dependent on the nature of the applicable federal laws and the status of the volunteer. Available protections include malpractice liability protection, workers' compensation coverage, waivers of licensure requirements, and reemployment protection. In response to the current and impending use of VHPs in the Gulf Coast region, the *Center* has drafted a brief summaries of legal protections applicable to VHPs hired by the federal government as intermittent disaster response personnel or temporary volunteers under a federal Declaration of Public Health Emergency, which can be found at www.publichealthlaw.net/Research/Katrina.htm (see Memos 1 and 2).

4. QUESTION: Where can I find information about volunteering to participate in the Hurricane Katrina response efforts?

ANSWER: Information on how to register as a temporary volunteer with DHHS and the types of volunteer assistance needed can be found at <https://volunteer.ccrf.hhs.gov/>. Additional information about volunteering to participate in the response efforts can be found at www.redcross.org. For information on how to participate in your state's efforts to respond to the crises in the Gulf Coast region, contact your state's emergency management office or department of health.

5. QUESTION: How are local assets incorporated into response efforts governed by the Emergency Management Assistance Compact (EMAC)?

ANSWER: EMAC provides for mutual assistance between member states during emergency or disaster situations. EMAC dictates the procedures for sharing assets between states to provide mutual assistance, outlines protections for these assets, and provides for reimbursement for the use of persons and other assets during a response. EMAC does not address the utilization of resources outside of the state government as a component of a state EMAC response. As a consequence, the incorporation of local assets into a state's EMAC response will be governed by state law provisions. Some states have accomplished this through the enactment of services agreements or memoranda of understanding (MOU) for the use of specific local employees for the response. The *Center* has drafted a legal analysis of the incorporation of local assets into response efforts governed by EMAC which provides more detailed information about this issue, as well as sample MOUs. This memo is available at www.publichealthlaw.net/Research/Katrina.htm (see Memo 3).

6. QUESTION: How will the HIPAA Privacy Rule effect the sharing of protected health information (PHI) during the response efforts?

ANSWER: The sharing of PHI is essential to effective health care responses. As a part of the response efforts, providers can share health information in several different ways: (1) to provide treatment; (2) to identify, locate and notify family members and guardians of an individual's location, general condition or death; (3) to prevent or mitigate a serious and imminent threat to the health and safety of an individual or the public; and (4) for purposes of maintaining a facility directory. The federal Department of Health and Human Services (DHHS) Office for Civil Rights, which is responsible for interpreting the HIPAA Privacy Rule, has issued an official memorandum on the Privacy Rule implications concerning Hurricane Katrina response, which can be found at <http://www.hhs.gov/ocr/hipaa/KATRINANHIPAA.pdf>. Significant, additional discussion of the HIPAA Privacy Rule during emergencies (which expands on HHS' guidance) is available in the article *The HIPAA privacy rule and bioterrorism prevention, planning, and response*, BIOSECURITY AND BIOTERRORISM 2004; 2:2: 73-80 by James G. Hodge, Jr., Erin Fuse Brown, and Jessica O'Connell. A link to the full text of the article is available at <http://www.biosecurityjournal.com/BSBT22.pdf>.

7. QUESTION: What legal protections will be available for volunteers participating in response efforts through their state's Emergency System for the Advance Registration of Volunteer Health Professionals (ESAR-VHP)?

ANSWER: The availability of legal protections against malpractice liability, workers' compensation coverage, rights to reemployment, and waivers of licensure requirements will be

determined by the law of the home state (the state which is administering the ESAR-VHP program in which the VHP is registered) and the host state (the state in which the volunteer is providing medical assistance). The *Center* has prepared a detailed analysis of the legal protections available under state governments pursuant to its ESAR-VHP Legal and Regulatory Issues Project, funded by HRSA. For more information about this project and other legal analysis, including an Advanced Tool Kit for addressing related legal issues, please see the *Center* website at <http://www.publichealthlaw.net/Research/Affprojects.htm>.

8. QUESTION: Where can I find more information about the legal and regulatory issues associated with volunteer participation in emergency response efforts?

ANSWER: For information about the *Center's* ESAR-VHP Legal and Regulatory Issues Project and other legal analysis regarding the use of VHPs in emergency response efforts, including an Advanced Tool Kit for addressing related legal issues, please see the *Center* website at <http://www.publichealthlaw.net/Research/Affprojects.htm>. Significant, additional discussion of the legal framework for the use of volunteer health professionals during emergencies is available in the article *Volunteer Health Professionals and Emergencies: Assessing and Transforming the Legal Environment*, BIOSECURITY AND BIOTERRORISM 2005; 3:3: 216-223 by James G. Hodge, Jr., Lance A. Gable, and Stephanie H. Cálves. A link to the full text of the article is available at <http://www.biosecurityjournal.com/BSBT33.pdf>.

9. QUESTION: Can the federal government utilize state emergency management resources under EMAC?

ANSWER: No. EMAC is an agreement of mutual aid between states. The federal government is not a party to the agreement, thus it is not permitted to utilize state resources under the authority of EMAC. For a more detailed discussion of the limitations on federal participation in EMAC, please refer to the *Center's* memorandum on the federal utilization of state resources in response to Hurricane Katrina, which can be found at www.publichealthlaw.net/Research/Katrina.htm (see Memo 5).

10. QUESTION: Can the federal government take state resources for purposes of disaster relief without the state's consent?

ANSWER: No. The federal government is not permitted to compel states to provide assistance in federal disaster relief efforts. In order for the federal government to take advantage of state resources, the state must consent to the use of the resources. Consent may be sought through an agreement or memorandum of understanding. For a more detailed discussion of the federal utilization of state resources during the response to Hurricane Katrina, please refer to the *Center's* memorandum at on the issue, which can be found at www.publichealthlaw.net/Research/Katrina.htm.

11. QUESTION: Which system of deployment gives volunteer health personnel greater liability protection, acceptance of licensure, access to compensation, etc. - EMAC or federal deployment under ESF-8?

ANSWER: The federal government has deployed volunteers to assist in the response to Hurricane Katrina via two federal avenues: (1) intermittent disaster response personnel under the National Disaster Medical System (NDMS) and (2) non-paid temporary federal employees under Schedule A of the Excepted Service. Both federal avenues provide licensure waivers, liability protections and workers compensation coverage. However, only federal volunteers deployed as

intermittent disaster response personnel with the Public Health Service will enjoy reemployment protection. State volunteers under EMAC may also enjoy reemployment protection, depending on the law of the state by which the volunteer is deployed. Additionally, under EMAC, the availability of all four types of legal protections will only be available if the volunteer has executed a VSA with the state by which he or she is deployed. Thus, the strength of the legal protections from states depends on the terms of the VSA. For additional discussion of the legal protections available to federalized volunteers and state volunteers acting pursuant to EMAC, please refer to the *Center's* memorandum on the subject at www.publichealthlaw.net/Research/Katrina.htm (see Memo 4).

12. QUESTION: Can volunteer health personnel who are designated as "non-paid temporary Federal employees," receive compensation from his or her regular employer while performing volunteer disaster response services on behalf of the Department of Health and Human Services (HHS)?

ANSWER: Yes. Temporary volunteers can receive compensation from other sources and still provide "volunteer services" to HHS, so long as they are not receiving compensation from HHS for these services. Typically, a volunteer health professional providing services on behalf of HHS will enter into a volunteer services agreement with the agency. The volunteer services agreement that a volunteer health professional would enter into under the applicable regulations would stipulate that the volunteer services are being provided without compensation from HHS ("services...offered to the government...on a without compensation basis"). Ongoing compensation to this volunteer from other sources, such as the individual's regular employer, would not affect this agreement or the protections provided by this agreement to the volunteer.

Dated: September 15, 2005

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