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MEMORANDUM

Hurricane Katrina Response

S.B. 1638 – Hurricane Katrina Emergency Health Workforce Act of 2005

On September 8, 2005, Sen. Obama introduced the Hurricane Katrina Emergency Health Workforce Act in the U.S. Senate. As of October 7, 2005, the bill remains before the Senate Committee on Health, Education, Labor and Pensions. There are seven main components to the bill:

1. Establishment of the National Emergency Health Professionals Volunteer Corps (NEHPVC);
2. Establishment of a database of volunteer health professionals (VHPs) for use in the response to federal emergencies;
3. Reemployment protections for VHPs activated and deployed during an emergency;
4. Emergency preparedness medical training requirements for medical schools;
5. Liability protections for VHPs;
6. Suspension of state licensure requirements during an emergency for federally activated and deployed VHPs; and
7. Grant of general waiver authority to the Secretaries of Health and Human Services and Homeland Security relating to legal requirements applicable to health professions.

Each of these requirements may have a significant impact on the future deployment and use of VHPs in states that are currently facing (or will face) emergencies.

Establishment of the National Emergency Health Professionals Volunteer Corps (NEHPVC). The NEHPVC is proposed as a means of establishing an adequate supply of health professionals for deployment in federal, state or local emergencies. The NEHPVC will be comprised of health professionals who have medical training and expertise in several enumerated

areas of medicine. Each member of the corps must be certified by the Director of the corps as having the appropriate professional training and expertise, which includes an assessment of the member's licensure and expertise. The members must also have completed an emergency management training program and had their emergency response skills assessed by the Director. Members may be deployed by the Secretary of HHS during a federal, state or local emergency whenever there is a need for medical expertise. Although a state or local government can request the assistance of the NEHPVC from the Secretary of HHS, these entities cannot directly deploy its members. The Director of the corps is responsible for coordinating the establishment of the NEHPVC with the Medical Reserve Corps (MRC) and other volunteer networks.

Establishment of a database of volunteer health professionals (VHPs) for use in the response to federal emergencies. The bill also provides for the establishment of a federal database of volunteer health professionals (VHPs). This proposal mimics the federal volunteer portal project that DHHS proposed in the summer 2005. The database will include information regarding the identity, licensure, credentials, and emergency response training of the individual practitioners. The database will also compile information regarding members of the MRC, NEHPVC, National Disaster Medical System (NDMS), and Commissioned Corps of the Public Health Service (PHS). It will also be accessible by state and local health departments, leaving some question as to the future utility of state ESAR-VHP systems.

Reemployment protections for VHPs activated and deployed during an emergency. Broad reemployment protections for VHPs providing medical assistance as a part of a federally declared disaster as also provided via the Uniformed Services Employment and Reemployment Rights Act (USERRA). This Act extends reemployment protection to members of the uniformed services. The proposed bill would extent these reemployment protections to members of the NEHPVC, health professionals activated by FEMA, and other health professionals who provide services on a volunteer basis in a formal capacity under the auspices of DHHS or DHS. Under a broad interpretation, this might also include VHPs responding to federally-declared emergencies through state ESAR-VHP systems.

Emergency preparedness medical training requirements for medical schools. The bill would require that children's hospitals and Medicare Graduate Medical Education Programs provide for disaster preparedness training as an element of residency training programs. These training programs may help ensure the availability of a cadre of properly qualified and trained medical professionals to participate in ESAR-VHP.

Liability protections for VHPs. Broad liability protections of VHPs in the form of indemnification are proposed. For purposes of liability, VHPs are considered to be employees of the federal Public Health Service (PHS), who are covered by the Federal Tort Claims Act (FTCA). These liability protections apply to VHPs who provide "qualifying health services" as a part of a federally-declared emergency and do not receive compensation for their services (other than for reasonable expenses associated with their provision). "Qualifying health services" include medical assistance provided during, and as a result of the occupancy of, a major disaster declared by the President under the Stafford Act. Liability protections would apply to individual VHPs, but not health care entities, like hospitals. The U.S. Attorney General would defend and indemnify VHPs for negligent actions associated with the provision of

qualifying health services. *See* 42 U.S.C.A. § 233. Judgments would be paid through a new federal fund.

Suspension of state licensure requirements during an emergency for federally activated and deployed VHPs. The Secretary of HHS would be empowered to suspend state licensure and certification requirements for VHPs operating in a particular state if the VHP is appropriately licensed in another state. Essentially, this would allow the federal government to waive state licensure requirements on the premise it would streamline waivers of licensure requirements for out-of-state VHPs. This would only apply in a federally-declared emergency and it requires an affirmative action on the part of the Secretary of HHS to invoke.

Grant of general waiver authority to the Secretaries of Health and Human Services and Homeland Security relating to legal requirements applicable to health professions. Lastly, the bill provides the Secretaries of HHS and DHS with broad waiver authority to waive the requirements of any federal law applicable to VHPs that would limit the ability of the volunteers to provide medical services during a federally-declared emergency.

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