V&E Health Care Special Alert

Health Law Issues Raised by Hurricane Katrina

On August 31, 2005, the Secretary of Health and Human Services, Michael O. Leavitt, declared a public health emergency pursuant to Section 319 of the Public Health Service Act to deal with the devastation caused by Hurricane Katrina and to enable the nation, especially those states specifically affected by the Hurricane, to respond with all of its resources to address the issues arising out of the natural disaster. The declaration vested the Secretary with certain spending powers to issue grants and provide response assistance in accordance with the following statutory provision:

> If the Secretary determines, after consultation with such public health officials as may be necessary, that: (1) a disease or disorder presents a public health emergency; or (2) a public health emergency, including significant outbreak of infectious diseases or bioterrorist attacks, otherwise exists, the Secretary may take such action as may be appropriate to respond to the public health emergency, including making grants, providing awards for expenses, and entering into contracts and conducting and supporting investigations into the cause, treatment or prevention of a disease or disorder..". 42 U.S.C. § 247d.

In the aftermath of Hurricane Katrina, Vinson & Elkins publishes this Special Health Law Alert in the hope that we can provide information that may be of assistance to our clients and friends actively involved in addressing the displacement of thousands of patients in need of medical care.

Where applicable, we have identified telephone numbers, contact personnel, and websites as additional resources. In addition, since many of our clients are located or do business in Texas, we have included references to Texas state law and actions by Texas administrative officials relevant to the absorption of significant numbers of Hurricane Katrina evacuees.

I. Waiver by Secretary Leavitt

Section 1135 of the Social Security Act enables the Secretary of HHS to temporarily waive or modify the application of the requirements of the Medicare, Medicaid or State Children's Health Insurance Program ("CHIP") program to address an emergency to meet the needs of individuals enrolled in those governmental programs. 42 U.S.C. § 1320b-5. Under this authority, Secretary Leavitt, on September 1, 2005, executed a waiver of specific requirements applicable to providers under the Medicare, Medicaid, and CHIP programs. The waiver ensures that health care providers can furnish

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items and services to covered persons in good faith and be assured that they will be reimbursed under the applicable governmental program, even if they are not able to comply with all applicable laws as a result of the effects of Hurricane Katrina. The waiver applies to the following:

- certain conditions of participation and certification requirements applicable to providers;
- the requirement that physicians and other health care professionals hold licenses in the state in which they provide services;
- sanctions under EMTALA for the redirection of an individual to another location to receive a medical screening and examination pursuant to a state emergency preparedness plan or a transfer that arises out of hurricane related emergency circumstances;
- any limitations on payment to an out-of-network provider under the Medicare Advantage program; and
- sanctions and penalties arising under HIPAA.

The Secretary's waiver as originally executed applied only to the affected states of Louisiana, Mississippi, Florida, and Alabama. Concern was raised that Texas was not included in the Secretary's initial waiver despite the fact that Texas providers were, in large part, responding to the emergency needs of evacuees. Over the Labor Day weekend, the Secretary amended the waiver to include providers in Texas. The amended waiver, which is effective September 6, 2005, is retroactive to August 24, 2005 for Florida, August 29, 2005 for Alabama, Louisiana, and Mississippi, and September 2, 2005 for Texas. The waiver can be found at http://www.cms.gov/.

For further information, contact Susan Feigin Harris, Houston, 713.758.3465 or sharris@velaw.com.

II. CMS Action

CMS has issued a "FACT SHEET" assuring flexibility to accommodate the emergency health care needs of beneficiaries and medical providers due to the Hurricane. CMS recognizes that many beneficiaries have been evacuated and do not have identification, health care records, information on current health care status, or any means to provide verification of their status as government program beneficiaries. CMS is assuring health care facilities that the normal burden of documentation will be waived and that presumption of eligibility should be made in such circumstances.

The CMS Fact Sheet provides for the following relief:

- health care providers that furnish medical services in good faith but that cannot comply with the normal program requirements due to the Hurricane will be paid for the services provided;

- crisis services provided to Medicaid and Medicare patients transferred to non-certified facilities will be paid;
- facilities will be reimbursed for dialysis services provided to patients with kidney failure in alternate settings;
- Medicare contractors may pay the costs of ambulance transfers of patients evacuated from one health facility to another;
- prior authorization and out of network requirements will be waived for Medicare, Medicaid and CHIP managed care plans;
- licensing requirements for doctors, nurses, and other health care professionals who cross state lines will be waived as long as the provider is licensed in their home state; and
- hospitals and other facilities can be flexible in billing for beds that have been dedicated to other uses during the crisis.

A variety of complex Medicare reimbursement issues are presented by Hurricane Katrina and its aftermath. CMS has prepared a list of "Questions & Answers" ("Q&As") designed to address many of the payment issues faced by Medicare providers and suppliers. According to the CMS Q&As, the Medicare prospective payment methodologies for inpatient services will apply to prospective payment hospitals affected by the disaster, including situations in which both personnel and equipment are transferred from one hospital to another. In addition, the usual transfer rules apply to hospitals evacuating/transferring patients from affected areas (i.e., the discharging hospital is paid the full DRG and the evacuating/transferring hospital is paid on a graduated per-diem basis up to the DRG amount). The CMS Q&As address a number of potential transfer scenarios and provide guidance for appropriate coding and billing in such situations.

For example, in a situation in which Hospital "A" evacuates and sends patients to Hospital "B", but the patients are later moved to a shelter because Hospital "B" is forced to evacuate, CMS instructs that Hospital "A" would discharge the patient and reflect a transfer to Hospital "B" and indicate the appropriate patient status. Then, assuming Hospital "B" will receive the patient back into their facility, Hospital "B" is instructed to reflect the admission date as the date the patient is received from Hospital "A" and reflect the absent days as furlough/leave of absence days.

If a patient is transferred from Hospital "A" to Hospital "B" and the patient is planning on returning to Hospital "A", the first facility should continue to bill as long as the transfer is of a "short duration," defined as less than 30 days by CMS. If the initial facility is damaged, the facility must transfer the patient.

With multiple transfers due to a disaster and a situation that arises in which the original hospital is not aware of the location of the patient, CMS instructs that the first

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hospital should bill Medicare indicating a discharge/transfer, and the second facility should reflect the patient admitted on the day of the transfer from the first facility, and additionally identify a discharge upon transfer to another facility.

Payment for ambulance services utilized during an evacuation may be made depending upon the circumstances. CMS indicated that it would grant discretion to its contractors to make determinations based upon individual situations, but clarified that its contractors should consider the following with respect to such payment determinations: (i) medical necessity requirements apply in all cases; (ii) payment may only be made if the transport was to an approved destination; and (iii) multiple patient transport provisions apply in all cases. According to CMS, payment will only be made for ambulance services provided by ambulances that meet regulatory requirements (e.g., the vehicle is an ambulance with a certified crew).

There is some relief for providers with respect to the treatment of certain patient admissions that are required by the effects of Hurricane Katrina. For example, a hospital may bill for acute care services furnished in a psychiatric unit during a disaster. In such circumstances, the bill should be issued as if the services were furnished in the acute care portion of the hospital and the psychiatric unit should record the services/charges for a non-Medicare patient. In addition, for inpatient rehabilitation facility ("IRF") or distinct part unit admissions during the crisis, CMS will not count such patients for purposes of compliance with the "75 percent rule" in recognition that such beds may be needed to treat patients whose conditions do not fall within the 13 conditions required by the IRF payment rule. Further, critical access hospitals ("CAH") will be relieved from the 25-bed and 96-hour length of stay requirements to the extent necessary to meet the demands of the crisis. In all of these situations, the provider should carefully document the need for the bed based upon the demands forced upon it by the Hurricane Katrina disaster. Failure to maintain the proper documentation could create significant reimbursement implications down the line.

With respect to Medicare Advantage enrollees, the Section 1135 waiver issued by the Secretary allows such enrollees to use out-of-network providers in an emergency situation.

According to the CMS Q&As, physicians will be able to submit claims for Medicare beneficiaries treated outside the normal settings (e.g., shelters), and carriers will be requested to facilitate these claims. In addition, CMS recognizes that certain providers' locations may be displaced and/or destroyed as a part of the catastrophe and has instructed its carriers to streamline the Medicare enrollment process. Carriers will need at least a fax with the provider's tax identification number and enough information concerning the provider's identity to approve the new location, but will not require the full CMS Form 855. CMS also has indicated that providers will be allowed to file paper claims if necessary due to the disaster.

Medicare providers and suppliers should continue to pay close attention to the CMS website over the coming months as the impact of this catastrophe shifts focus from the short-term to the long-term impact. Given the size of the crisis, there will be

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numerous questions that will be presented to the agency for the first time, and providers should contact their fiscal intermediaries and carriers when such problems occur so that the impact on providers can be made clear to the agency. The link to the Q&A on the CMS website is http://www.cms.gov/.

CMS has identified the following contact names as identified below:

- Information on payments, staffing needs for emergency shelters and on general relief efforts can be obtained by contacting Colleen Carpenter in the Atlanta regional office at (404)562-7242, or Paula Hammond in the Dallas regional office at (214)767-8123.

- CMS has provided contact information for the following individuals who are the point persons for provider calls. CMS requests that providers use the regular customer services lines but the following numbers are available if the provider does not receive an answer or is not satisfied with the answer he/she receives:

Trispan – Angela Davenport (601) 664-4466
Mutual – Shirley Vosika (866) 734-9444 ext 2273
Cahaba MS – John Cook (601) 977-5850
Cahaba AL – Scott Shelton (205) 220-1336
Cahaba IA – Susan Pretnar (515) 471-7302
Palmetto (DMERC) – Robin Spires (803) 788-0222
Palmetto (RHHI) – Marilyn Reser (803) 763-1856 (South Carolina)
Marjorie Webber (727) 773-9225 ext. 15360 (Florida)
Arkansas BCBS (FI and carrier) **–** Kay Werner (501) 210-9254

TrailBlazer Health Enterprises (FI and carrier) – Pat Lewis (903-463-8054) prefers e-mail contact @ p.lewis@trailblazerhealth.com

If the provider cannot get through or does not get a response from the Medicare contractors, the provider may call the following staff in the appropriate regional offices:

Atlanta Regional Office

Mike Taylor - (404) 462-7374
Colleen Carpenter - (404) 562-7242
General Line – (404) 562-7390

Dallas Regional Office

Paula Hammond – (214) 767-8123
Jimmy Sigmund – (214) 767-0250
General Line – (214) 767-6401

Kansas City Regional Office

Phil Chiarelli – (816) 426- 5033

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Jim Frisbie – (816) 426-6389

Also of interest, CMS held an Open Door Forum on September 1, 2005 to discuss relevant topics related to Hurricane Katrina. A replay of the call in its entirety is available by calling 1-800-642-1687, #2865492.

For further information contact Greg Etzel, Houston, 713.758.3485 or getzel@velaw.com.

III. Medicaid

Regulatory restrictions applicable to Medicaid have been relaxed as noted above, pursuant to Secretary Leavitt's waiver. In Texas, Governor Perry requested federal emergency assistance and issued an emergency disaster declaration to address the challenge of housing, treating, and absorbing Louisiana residents who fled the aftermath of the Hurricane. Texas has sheltered thousands of evacuees, including those who are in severe and immediate need of medical care. Hundreds of evacuees were air-lifted to many Texas health care facilities and a multiplicity of health law questions were raised as a result.

Providers in Texas moved quickly to treat patients affected by the Hurricane, without knowledge of whether such patients were eligible for governmental program coverage and without accurate information, in many instances, regarding prior medical history or without the ability to obtain consent to treat. States are executing interstate agreements to facilitate enrollment of out-of-state residents into Medicaid and CHIP. The Texas Health and Human Services Commission ("THHSC") has provided a Medicaid and CHIP enrollment information and claims processing number to verify Medicaid and CHIP enrollment information at 1-800-473-2783. THHSC has requested that CMS approve a waiver to use a one-page Medicaid client enrollment application form. Also, Texas Medicaid & Healthcare Partnership and THHSC are exploring ways to easily identify and assign Medicaid identification numbers to designate a client as a Hurricane client, possibly enabling hospitals to file claims electronically. THHSC instructed that all evacuees would be placed into Medicaid fee-for-service programs. The Texas Hospital Association ("THA") is also working with THHSC and the Texas Department of State Health Services ("TDSHS") Emergency Support Center to address operational issues. THA's resource page can be accessed at http://www.thaonline.org/.

In addition, qualifying residents of Louisiana, Mississippi, and Alabama forced to relocate to Texas are eligible to receive Women, Infants, and Children ("WIC") benefits in Texas. Evacuees that had WIC benefits in the affected states, and others who qualify, can contact the local WIC clinic. WIC provides nutrition education, food, formula, and other services for low-income pregnant women, new mothers, infants, and children under five.

Texas schools and day care facilities are absorbing Hurricane evacuees into their schools and child care centers. TDSHS indicated that normal immunization requirements for attending school or child-care facilities in Texas are being temporarily waived for

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children displaced by Hurricane Katrina. Normally, students moving to Texas from other states are required to show proof of required immunizations before they are allowed to attend school.

CMS Q&As also address the Medicaid program and while many of the issues relating to Medicaid must be addressed on a state by state level, CMS provides some general guidelines. Emergency services are covered by Medicaid. Facilities that admitted individuals to a nursing facility without the required pre-admission screening, would not be considered to be out of compliance and Medicaid payments would be allowed if reasonable steps were taken to provide the care and the required screen is completed when the resources are made available. CMS also indicates that Medicaid would not pay for shelter costs for individuals who are not admitted to a facility, e.g., Medicaid eligibles that were located in hospital halls and auditoria, but were not admitted because they did not suffer due to a medically necessary illness. CMS indicates that states can automatically extend Medicaid eligibility and redeterminations, for Medicaid eligible individuals whose eligibility would run out during the time period spanning the emergency declaration, to enable eligibility workers to process the huge influx of new Medicaid eligible individuals.

For further information contact Susan Feigin Harris, Houston, 713.758.3465 or sharris@velaw.com.

IV. Pharmaceutical Needs

Questions have been raised regarding the need to refill pharmaceuticals when there are no records of the prescription, no way to communicate with a primary care physician, and no current health care practitioner available to prescribe pharmaceuticals. In Texas, the Texas Pharmacy Act provides authority for a pharmacist to refill a prescription on an emergency basis when the prescriber can not be reached or when a natural or manmade disaster has occurred. Tex. Occ. Code Ann. § 562.053. The pharmacist may use his/her professional judgment in refilling a prescription (other than a Schedule II controlled substance) provided that the failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering. Normally, the law provides that no more than a 72-hour supply be filled in cases of emergency, but the Governor of Texas' emergency declaration will allow the provision of up to 30 days supply of medication for patients relocated to Texas due to Hurricane Katrina. *See*, http://www.tsbp.state.tx.us/hurricanemain.htm.

THHSC instructs Texas pharmacies that fill prescriptions for Louisiana Medicaid recipients to fax enrollment forms posted at THHSC and verify eligibility by calling 1-800-473-2783.

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V. Managed Care

Commercial insurance carriers have waived applicable restrictions to facilitate care of beneficiaries affected by the Hurricane. The relaxation of restrictions includes suspension of the usual 30-day restriction on early prescription refills for commercial and Medicare members; establishment of 24-hour crisis and toll-free hotlines; payment for emergency transportation; and treatment of hospitals as participating network hospitals under individual benefit provisions. Specific information relating to each managed care company response can be found at http://www.ahip.org or at http://www.naic.org.

VI. HIPAA

As noted above, the Section 1135 waiver, issued by Secretary Leavitt waived sanctions and penalties for failure to comply with certain aspects of the federal privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (the "HIPAA Privacy Rule"). Specifically, entities subject to the HIPAA Privacy Rule in Florida, Alabama, Louisiana, Mississippi, and Texas were exempted from sanctions pertaining to: (i) the requirements to obtain a patient's oral agreement to speak with family members or friends, or to orally opt out of the facility directory under 45 C.F.R. § 164.510; (ii) the requirement to distribute a notice of privacy practices under 45 C.F.R. § 164.520; and (iii) a patient's right to request privacy restrictions or confidential communications under 45 C.F.R. § 164.522. The waivers were retroactively effective August 24, 2005 for Florida; August 29, 2005 for Alabama, Louisiana, and Mississippi; and September 2, 2005 for Texas. The effective period of the waivers is for a period of time not to exceed 72 hours from implementation of a hospital's disaster protocol. Accordingly, hospitals in the affected states should have implemented their internal disaster plan to effect the HIPAA waiver.

In addition, on September 2, 2005, the federal Office for Civil Rights ("OCR"), charged with enforcement of the HIPAA Privacy Rule, issued a Special Bulletin in light of Hurricane Katrina. Unlike the Section 1135 waiver pertaining to certain HIPAA Privacy Rule requirements, which was applicable only to Alabama, Florida, Louisiana, Mississippi, and Texas, the Special Bulletin *applies to all providers*, and serves as a reminder of the manner in which protected health information can be used and disclosed under the HIPAA Privacy Rule, specifically "how the HIPAA Privacy Rule allows patient information to be shared to assist in disaster relief efforts, and to assist patients in receiving the care they need."

In the Special Bulletin, OCR reiterates that health care providers may share patient information as necessary to provide treatment to patients, for notification purposes, to prevent or lessen a serious and imminent threat to health and safety, and in conjunction with a facility directory. *See* 45 C.F.R. §§ 164.506(c); 164.510; 164.512(j).

- Under the HIPAA Privacy Rule, health care providers are specifically permitted to use and disclose protected health information for "treatment" purposes. "Treatment" includes, but is not limited to, activities such as sharing information

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with other health care providers, referring patients for treatment, and coordinating patient care with others. *See* 45 C.F.R. § 164.501 (defining "treatment").

- With regard to notification purposes, the HIPAA Privacy Rule specifically permits health care providers to disclose protected health information as necessary to identify, locate, and notify family members, guardians, or other persons responsible for an individual's care of that individual's location, general condition or death. *See* 45 C.F.R. § 164.510(b). Thus OCR emphasized that a hospital "may notify the police, the press, or the public at large when necessary to help locate, identify or otherwise notify family members and others as to the location and general condition of their loved ones." In the Special Bulletin, OCR also emphasizes that:

  > when a health care provider is sharing information with disaster relief organizations that, like the American Red Cross, are authorized by law or their charters to assist in disaster relief efforts, *it is unnecessary to obtain a patient's permission if doing so would interfere with the organization's ability to respond to the emergency*.

- The HIPAA Privacy Rule permits health care providers to disclose protected health information to anyone if the health care provider in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public – consistent with applicable law and the provider's standards of ethical conduct. 45 C.F.R. § 164.512(j).

- Under the HIPAA Privacy Rule, health care facilities maintaining a directory of patients are permitted to tell people who call or ask about individuals by name whether the individual is at the facility, their location in the facility, and their general condition. 45 C.F.R. § 164.510.

The waivers identified above enable health care providers and disaster relief organizations to provide health care and aid in the location of family members without fear of violation of HIPAA privacy rules.

When evaluating the permissibility of any disclosure of protected health information, health care providers should also keep in mind state laws governing disclosure without patient consent or authorization, which may be different, and arguably more limited, than HIPAA. However, it is unlikely that a provider disclosing protected health information in reliance on the OCR clarification would be penalized or subject to liability given the exigent circumstances presented by Hurricane Katrina.

For further information contact Jason Pinkall, Houston, 713.758.4570 or jpinkall@velaw.com.

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VII. Patient Consent, Physician Licensure, and other Risk Management Issues Associated with Care to Hurricane Victims

Questions have been raised with respect to the legal parameters governing patient consent, the provision of non-emergency care to minors, and out-of-state physician licensure, as a result of Hurricane Katrina.

Consent Issues

In Texas, if an adult patient of a hospital or nursing home is incompetent or incapable of communicating, an adult surrogate may consent to medical treatment on the patient's behalf. Tex. Health & Safety Code Ann. ch. 313. The hospital or nursing home must make a reasonably diligent (and documented) effort to locate an adult, in accordance with the following priority list, who is available and willing to consent to medical treatment on behalf of the patient:

- the patient's spouse
- an adult child of the patient acting as sole decision-maker under a waiver and consent of all other qualified adult children of the patient
- a majority of the patient's reasonably available adult children
- the patient's parents
- the individual clearly identified to act for the patient by the patient while the patient was competent
- the patient's nearest living relative
- a member of the clergy.

Tex. Health & Safety Code Ann. § 313.004. A surrogate from the above list need not be physically present to consent to the treatment. If the surrogate gives a telephone consent, the consent must be documented in the medical record and signed by the staff member receiving the consent, and the surrogate must personally sign the informed consent form at the earliest opportunity. *Id.* § 313.005. Consent for treatment under Chapter 313 is confined to treatment to maintain or treat the patient's physical or mental condition. Voluntary inpatient mental health services and electro-convulsive treatment are outside the scope of services for which consent may be obtained under Chapter 313.

Consent for emergency care of an adult is not needed if the individual is unable to communicate and "suffering from what reasonably appears to be a life-threatening injury or illness." Tex. Health & Safety Code Ann. § 773.008(1). The same standard applies in the case of a child, if the parent or other person legally authorized to consent to treatment is not present. *Id.* § 773.008. If a child is not suffering from a life-threatening injury or illness, consent for medical, dental, psychological, and surgical treatment may be

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obtained from the following individuals if the parent or other authorized individual cannot be contacted:

- a grandparent
- an adult brother or sister
- an adult aunt or uncle
- an educational institution in which the child is enrolled, with written authorization to consent from an authorized individual
- an adult with actual care, control, and possession of the child, with written authorization to consent from an authorized individual
- a court with jurisdiction over a suit affecting the parent-child relationship
- an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court
- a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.

Tex. Family Code Ann. § 32.01. Written consent under Family Code § 32.01 must recite the relationship between the child and the adult giving consent.

Liability of Volunteers

Questions have been raised regarding liability that may arise in the context of providing volunteer services to affected Hurricane patients. The Volunteer Protection Act of 1997 should provide the necessary protection to protect volunteers of nonprofit organizations or governmental entities from an act or omission if the volunteer was acting in the scope of the voluntary responsibilities, the volunteer was properly licensed or certified for the activities or practices in the state in which the harm occurred, the harm was not caused due to willful or wanton misconduct, gross negligence, reckless misconduct or a conscious or flagrant indifference to the individual harmed by the volunteer. 42 U.S.C. § 14503.

Various provisions of Texas law protect volunteers from liability in the provision of medical care as well. Under Section 79.003 of the Texas Civil Practice and Remedies Code, a volunteer (someone who does not expect or receive compensation) is immune from civil liability for an act or omission (unless reckless or intentional, willful, or wanton misconduct) when giving care, assistance, or advice with respect to a natural disaster in which the care is provided at the request of local, state, or federal agencies. The term "volunteer" is defined to include physicians, retired physicians, physician's assistants, registered nurses, licensed vocational nurses, pharmacists, podiatrists, dentists, dental hygienists, and optometrists or therapeutic optometrists.

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Similarly, a volunteer health care provider who is a direct service volunteer of a *charitable* organization is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient, as long as the patient signed a document acknowledging the voluntary status and immunity from liability of the volunteer health care provider. Tex. Civ. Prac. & Rem. Code Ann., Ch. 84. An example consent form is available at the Texas Medical Association website, at http://www.texmed.org. Chapter 84 also provides for a limit on damages against a hospital or hospital system when the hospital provides charity care and the patient signs the charity consent form (link above). However, in cases involving incapacitated adults or minors for whom no responsible adult is available to sign, Section 84.0065 states that the charity care consent form is not required for the liability limit to apply.

Should TDSHS commence efforts to control communicable diseases, Chapter 81 of the Texas Health & Safety Code protects private individuals who perform duties in compliance with orders or instructions of a health authority under that chapter from liability for death or injury to a person.

A person who in good faith administers emergency care with no expectation of remuneration is protected from civil liability for damages for an act performed during an emergency under Texas Civil Practice and Remedies Code § 74.151. Section 74.152 protects unlicensed emergency medical service personnel, whether or not such care is provided with the expectation of remuneration. Chapters 102, 104 and 108 of the Texas Civil Practice and Remedies Code limits the liability of public servants (including physicians rendering emergency care in government hospitals and physicians performing services under contract with a state agency) in general.

Physician Licensure Issues

In the aftermath of the Hurricane, displaced physicians may desire to provide care in Texas, and Texas physicians may want to work or volunteer in states affected by the Hurricane. Texas, Louisiana, and Mississippi are all parties to the "Emergency Management Assistance Compact" ("EMAC") that provides for assistance between the states in managing a disaster. The terms of EMAC are set forth at Chapter 778 of the Texas Health & Safety Code. EMAC requires that a state provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of measures which would protect and ensure the uninterrupted delivery of services and medicine. Chapter 778 provides that professionals licensed or certified by one state shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid in the requesting state, subject to any limitations imposed by the governor of the requesting state.

Out-of-state physicians rendering care in Louisiana in the aftermath of the Hurricane may provide care to patients in Louisiana, particularly with regard to the administration of vaccines or medication or vaccines to prevent infectious diseases. Care provided by out-of-state physicians in the Hurricane aftermath is considered first aid in an emergency, and physicians are not required to seek Louisiana licensure. *See*

Louisiana Medical Practice Act, La. R.S. § 37:1291 and La. R.S. § 9:2793; *see also* http://www.texmed.org.

Mississippi also has announced that non-Mississippi physicians wishing to obtain an Emergency Temporary Medical License in Mississippi must submit their name, specialty, current number and state of licensure, regular practice location, address, and phone number to the Mississippi State Board of Medical Licensure.

The Texas State Board of Medical Examiners ("TSBME") has also stated that it will expedite Hurricane Katrina-related requests for temporary physician licensure in Texas. To request a Visiting Physician Temporary license in Texas, an out-of-state physician must obtain a "sponsoring physician" who is currently licensed in Texas, and submit a letter to the TSBME containing his/her individual information, as well as the sponsoring physician information. The temporary licenses will be issued for a 45-day period, and requests are expected to have a one to two business day turnaround time. The sponsoring physician will be responsible for the prescriptions ordered by the visiting physician. More information is available at the TSBME website.

Displaced physicians in postgraduate training programs may be eligible to continue their training in Texas programs. Temporary postgraduate training permits will be available through the TSBME shortly, and the temporary permits will also be valid for 45 days.

For further information contact Krista Barnes, Houston, 713.758.4496 or kbarnes@velaw.com or Nancy LeGros, Houston, 713.785.3239 or nlegros@velaw.com.

VIII. Quarantine

In the aftermath of Hurricane Katrina, there is concern that the close quarters in which many evacuees are living and the unsanitary conditions of the cities from which they came may create conditions susceptible to mass outbreaks of various diseases and illnesses. Chapter 508 of the Texas Health and Safety Code allows the commissioner of public health or other health authorities to impose an area quarantine when an environmental or toxic agent (any bacterium or other disease-producing organism capable of causing widespread human illness) is introduced into an environment. Chapter 81 of the Health and Safety Code contains rules governing quarantines, but the authority is relatively broad, and provides authority to quarantine individuals and property, and in the case of a public health disaster, to "impose additional control measures the department or health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to public health" (Tex. Health & Safety Code Ann. §§ 81.083, 81.084, and 81.085). Additionally, during a quarantine period, section 81.085 provides that if an individual does not have updated or appropriate immunizations, appropriate action may be taken to protect that individual and the public from communicable disease.

For further information contact Susan Feigin Harris, Houston, 713.758.3465 or sharris@velaw.com.

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IX. Academic Medicine/Medical Education

The Hurricane displaced many medical students and residents in the Gulf Coast and medical schools across the nation have responded by offering to provide education and training opportunities for those displaced medical students and residents. The American Academy of Medical Colleges ("AAMC") is working to provide undergraduate and graduate medical education opportunities for displaced medical students and residents and information regarding training programs and plans can be found at http://www.aamc.org. In addition, the National Institutes of Health ("NIH") director Elias Zerhouni, M.D. requested that the AAMC organize an emergency conference call with all U.S. medical school deans to address the health care needs of patients affected by Hurricane Katrina. NIH has established a command center and a Hurricane Katrina response web site at http://www.nih.gov/ and will serve as the federal government's link with academic medicine. AAMC is working with the American Hospital Association, the Catholic Health Association, the Federation of American Hospitals, the National Association of Children's Hospitals and Related Institutions, the National Association of Public Hospitals and Health Systems, Premier, and VHA to coordinate medical relief efforts with the federal government. Information concerning the impact on research grants and other disruptions to post doctoral educational programs can be found on the AAMC website.

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