



The Centers for Law & the Public's Health: A Collaborative at Johns Hopkins and Georgetown Universities

*CDC Collaborating Center for Public Health Legal Preparedness
WHO/PAHO Collaborating Center on Public Health Law and Human Rights*

Hampton House, Room 513
624 North Broadway
Baltimore, Maryland 21205
www.publichealthlaw.net
(410) 955-7624; 410-614-9055 [fax]

Legal and Regulatory Issues Concerning Volunteer Health Professionals in Emergencies

2. Universal Checklist

Purpose. This Checklist serves as a tool for identifying, assessing, and clarifying relevant legal and regulatory issues related to the implementation and organization of a volunteer registration system.

Organization. This Checklist presents a series of questions within five broad subject categories that encompass the primary legal issues related to the establishment of a registration system: I. Emergency Declarations; II. Licensing, Credentialing, and Privileging; III. Civil Liability, Immunity, and Indemnification; IV. Workers' Compensation; and V. Criminal Liability. Each of these categories is indicated in the first column of the Checklist. The second column, Checklist Questions, presents core questions organized within each subject matter area and other subcategories.

Suggestions for Use. This Checklist is designed for use by government officials at the state and local levels, their public and private sector partners, and others who are responsible for, or interested in, assessing legal preparedness concerning volunteer registration systems.

Users should view the questions as guides to the key legal issues within each topical area. Specific, additional questions may arise from the exploration of these issues within each jurisdiction. Users may benefit from a deliberative, committee-oriented process to respond to each of the various questions. This process may provide greater opportunities for information sharing, relationship building, and comprehension.

Disclaimer. Nothing within this Checklist is meant to provide specific legal guidance or advice to any user of these documents. Rather, as noted above, this Checklist is meant to serve as a helpful tool for assessing these legal issues within the user's specific jurisdiction. Legal advice on the issues discussed is necessarily fact-specific and may vary depending upon state or local

law, and the specific circumstances involved. For specific requests for legal advice, individuals should contact their state's Office of the Attorney General or their assigned legal counsel.

Subject Category	Checklist Question	√
I. Emergency Declarations		
A. Public Health Emergencies		
	1. Has the state or local government adopted a statutory or regulatory definition of a “public health emergency” or other similar terms (e.g., public health crisis or catastrophe)?	
	2. Does the state or local government have procedures that must be followed for the governor or other primary political authority to declare a public health emergency?	
	3. Do the procedures to declare a public health emergency require specificity as to the type, nature, location, and duration of the emergency?	
	4. Once a public health emergency has been declared, is there statutory or regulatory authority to grant specific emergency powers to state or local public health agencies and other relevant entities to facilitate emergency response efforts?	
	5. Do public health emergency powers granted include immunity or indemnification for volunteer health professionals who are assisting in emergency response efforts?	
	6. Does the state statutorily define the term “volunteer” (or other similar terms) to include health professionals within an emergency management context?	
	7. Is there statutory or regulatory authority that permits the governor or other political authority to terminate the public health emergency or which provides for automatic termination once certain conditions are met?	
B. General Emergencies		
	8. Has the state or local government adopted a statutory or regulatory definition of an “emergency” and/or “disaster” (or other similar terms)?	
	9. Does the state or local government have an emergency management system in place?	
	10. Does the state’s or local government’s general emergency provision also cover emergencies that affect public health?	
C. Dual Declarations		
	11. Has the state or local government adopted conflicting statutory or regulatory definitions of a “public health emergency,” “general emergency,” and/or “disaster”?	
	12. Do state or local laws and regulations grant authority to different agencies based upon a declaration of “public health emergency” or “general emergency”?	
	13. Does the statutory or regulatory scheme require or provide for coordination of emergency response efforts among the various state and local agencies involved in the emergency response efforts?	
II. Licensing, Credentialing And Privileging		
A. Licensure Requirements		
	14. What type of professionals are required to have state licensure or certification to practice in the state?	
	15. Does state law provide for civil and/or criminal penalties for health care professionals who practice without a license?	

Subject Category	Checklist Question	√
	16. Has the state adopted provisions for reciprocity of state licensure and/or certification requirements for health professionals acting in response to an emergency, including physicians, nurses, and behavioral health professionals, who are licensed in another state (e.g., MSEHPA, MNPA, EMAC)?	
	17. Has the state entered into reciprocity agreements or compacts providing for the recognition of out-of-state licenses and/or certifications for health professionals (e.g., NLC, CPQ)?	
B. Credentialing and Privileging Requirements		
	18. Does state law require hospitals to establish medical staff bylaws including provisions for credentialing and privileging in response to emergencies or disasters?	
	19. Are hospitals required to adopt disaster privileging policies that comply with JCAHO requirements?	
	20. Does state law require hospitals to have an emergency management plan that governs the hospital's response to a declared emergency?	
III. Civil Liability, Immunity and Indemnification		
	21. Are civil liability protections explicit in the state or local public health emergency statutes and regulations or other relevant laws?	
	22. Has the state entered into any intrastate or interstate mutual aid agreements that address civil liability (e.g., EMAC, IEMAC, MIMAL)?	
	23. Does the state tort claims act abrogate sovereign immunity for state actors related to emergency response activities?	
	24. Does the state tort claims act provide civil liability protection for “discretionary acts” by state actors (e.g., government public health agencies, responders and volunteers working on behalf of the state, private sector entities working under contract with the state) during emergencies?	
	25. Do conflicts of laws rules address which state's law will apply when an out-of-state health care volunteer commits an act giving rise to liability in another state?	
A. Volunteer Health Professionals		
	26. Does state law explicitly provide volunteer health professionals with immunity from civil liability (e.g., Volunteer Protection Acts, Good Samaritan Laws, State Emergency Statutes and Compacts) when responding to an emergency?	
	27. Does the state Volunteer Protection Act provide volunteers with liability protections that exceed protections provided by the Federal Volunteer Protection Act?	
	28. Do state sovereign immunity protections apply to the actions of volunteer health professionals that are employees of the state?	
	29. Does the state Good Samaritan law apply to the actions of volunteer health professionals, and, if so, under what circumstances?	
	30. Do state emergency statutes or compacts (e.g. MSEHPA, MIMAL, EMAC) provide civil liability protection for volunteer health professionals?	
	31. Do state laws that provide volunteer health professionals with immunity from civil liability apply to compensated and uncompensated volunteers?	
	32. Are there exceptions to civil liability protections for volunteer health professionals for acts that rise to the level of gross negligence, recklessness, or willful or wanton misconduct?	
	33. Are entities employing volunteer health professionals, including governmental agencies, required to defend and indemnify volunteers for tortious acts committed within the scope of their duties?	
B. Health Care Entities		

Subject Category	Checklist Question	√
	34. Do health care entities face potential civil liability for their own tortious acts committed in association with the use and application of a registration system?	
	35. Do health care entities face potential civil liability for the tortious acts of their employees, agents, and volunteers?	
	36. Does state law immunize health care entities utilizing volunteers who engage in negligent acts (e.g., Volunteer Protection Acts, Good Samaritan Laws, State Emergency Statutes and Compacts)?	
	37. Does state law immunize health care entities for negligent acts associated with the use and/or administration of the registration system?	
C. Administrators of a VHP registration System		
	38. Do state sovereign immunity protections apply to governmental agencies administering a registration system?	
	39. Do state sovereign immunity protections apply to private contractors associated with the administration of a registration system?	
IV. Workers' Compensation		
	40. Is a volunteer health professional recognized by state law as an employee of the state or health care entity for whom he/she is providing emergency health care services?	
	41. Are volunteer health professionals required to register with the state or other political subdivision in order to qualify for workers' compensation benefits for injuries sustained in the performance of their duties?	
	42. Are existing "home" employers of volunteer health professionals required to provide workers' compensation coverage for injuries sustained in the course of performing their duties as a volunteer?	
	43. Do conflicts of laws rules provide guidance as to whether the workers' compensation laws of the home or host state apply to an out-of-state volunteer health professional's claims for injuries sustained in the course of his/her duties?	
	44. Do the applicable workers' compensation laws provide for the coverage of occupational diseases contracted in the course of the performance of volunteer activities (e.g., outbreaks of infectious diseases, bioterrorist attacks)?	
V. Criminal Liability		
	45. Does state law provide for criminal penalties for health professionals practicing their trade without a license?	
	46. Are criminal actions exempted from the immunity protections granted to health care volunteers under Volunteer Protection Acts, Good Samaritan Laws, and State Emergency Statutes and Compacts?	
	47. Do sovereign immunity protections apply to criminal actions engaged in by employees or agents of the state?	