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## MEMORANDUM

### Hurricane Katrina Response Legal Protections for Volunteer Health Professionals (VHPs) in Arkansas, Kentucky, and South Carolina

The response to Hurricane Katrina has drawn upon volunteer resources in many states. In addition to requiring the assistance of volunteer health personnel (VHPs) in the directly affected states of Louisiana, Mississippi, and Alabama, other states have provided assistance to the Katrina evacuees, including Arkansas, Kentucky, and South Carolina. VHPs (and those utilizing them) in these additional states face challenging legal issues, 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 for Law and the Public's Health* has prepared an initial brief summary table that provides the answers to key legal questions and the corresponding statutory citations concerning protections for VHPs for each of the three states.

***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. Rather, this information serves as a tool for assessing VHPs' legal interests within jurisdictions. VHPs and their coordinators should contact their local, state or territorial legal advisors for specific legal guidance.*

<b>Legal Issue</b>	<b>South Carolina</b>	<b>Kentucky</b>	<b>Arkansas</b>
<i>Is the state a signatory to the Emergency Management Assistance Compact (EMAC)?<sup>1</sup></i>	Yes	Yes	Yes
<i>Is the state a signatory to the Southern Regional Emergency</i>	Yes	Yes	Yes

<sup>1</sup> 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. Under EMAC, officers or employees of party states are entitled to waivers of professional licensure requirements, civil liability protection, and workers' compensation coverage. Currently, EMAC has been executed by forty-eight states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Hawaii and California have not signed onto EMAC.

<b>Legal Issue</b>	<b>South Carolina</b>	<b>Kentucky</b>	<b>Arkansas</b>
<i>Management Assistance Compact (SREMAC)?<sup>2</sup></i>			
<i>Does the state legally define emergency or disaster?</i>	Yes, emergency. A statutorily defined “emergency” includes an actual or threatened flood, storm, other public calamity. (S.C. Code Ann. § 25-1-430(b)). The Governor is vested with power to suspend laws that hinder emergency responses. (S.C. Code Ann. 25-1-440(a)(3)).	Yes, emergency and disaster. An emergency includes situations which threaten public health or safety and are beyond the capabilities of a local emergency response agency. (Ky. Rev. Stat. § 39A.020(10)).	Yes, disaster. A disaster includes natural disasters such as floods and storms. Must be of sufficient severity to warrant state action or require assistance from the state government to supplement local resources. (Ar. Code Ann. § 12-75-103(3)).
<i>Does the state legally define public health emergency (PHE)?</i>	Yes. PHE means the occurrence of imminent risk of a qualifying health condition. Qualifying health conditions include those caused by terrorism, epidemics or infectious agents. (S.C. Code Ann. §§ 44-4-130(P), (R)).	No	No
<i>Does the state statutorily define “volunteer?”</i>	Yes. A volunteer is a person providing goods or services to the government without compensation. (S.C. Code Ann. § 8-25-10(a)).	No relevant definition of volunteer is provided.	Yes. "Emergency Volunteer Reserve Cadre" includes persons recruited as volunteers to serve in time of emergency and to supplement the regular employees of the Ark. Dep't. of Emergency Management in disaster response and recovery operations. (Ark. Code Ann. § 12-83-103).
<i>Does the state offer some liability protections for health care providers during declared emergencies?</i>	Yes. Liability protection may be available for health care providers providing services on behalf of a governmental entity in within the scope of their official duties. (S.C. Code Ann. § 15-78-30).  Volunteers working with state agencies enjoy the protection of sovereign immunity. Government	Yes. Emergency management workers, including registered volunteers, are immune from liability for death, personal injury or damage to property actions related to the conduct of emergency management activities. No immunity is available for cases of willful misconduct, gross negligence, or bad faith.	Yes. Emergency service workers, including volunteers, are immune from liability for death, personal injury or damage to the property of another. Immunity does not apply to cases of willful misconduct, gross negligence or bad faith. (Ark. Code Ann. § 12-75-128(b), (c)).  Yes, for members of the

<sup>2</sup> SREMAC provides for mutual assistance and legal protections to volunteers in a similar fashion as EMAC. Eighteen states, which are members of the Southern Governors Association, are party members to SREMAC.

<i>Legal Issue</i>	<b>South Carolina</b>	<b>Kentucky</b>	<b>Arkansas</b>
	<p>departments may provide liability insurance for volunteers. (S.C. Code Ann. § 8-25-40(b)).</p> <p>State is not liable for losses resulting from emergency preparedness activities. (S.C. Code Ann. § 15-78-60(19)).</p>	<p>(Ky. Rev. Stat. § 39A.280(3), (6)).</p> <p>State has a duty to provide a defense to registered emergency management volunteers. (Ky. Rev. Stat. § 39A.280(7)).</p>	<p>emergency services cadre. (Ark. Code Ann. § 12-83-104).</p>
<i>Does the state offer some liability protection for hospitals or other health care entities during declared emergencies?</i>	No	<p>Volunteer and auxiliary emergency management agencies are immune from liability for death, personal injury or damage to property actions related to the conduct of emergency management activities. No immunity is available for cases of willful misconduct, gross negligence, or bad faith. (Ky. Rev. Stat. § 39A.280(3)).</p>	No
<i>Does the state offer some workers' compensation coverage for VHPs or other volunteers during declared emergencies?</i>	No	<p>Yes, for volunteer members and trainees of emergency management agencies. (Ky. Rev. Stat. § 342.640(3)).</p> <p>Emergency management workers and volunteers from other states may be entitled to workers' compensation coverage, pursuant to mutual aid agreements. (Ky. Rev. Stat. §§ 39A.260(4), (5)).</p> <p>The state is not liable for personal injuries to emergency management volunteers unless it maintains insurance for such injuries or the injury is otherwise covered by workers' compensation law. (Ky. Rev. Stat. § 39A.280(2)).</p>	<p>Yes, for volunteer emergency services workers who are regularly employed by the state or local governments. Emergency services workers are considered local government or state employees. (Ark. Code Ann. § 12-75-129).</p> <p>Yes, for members of the emergency services volunteer cadre. (Ark. Code Ann. § 12-83-104).</p>
<i>Does the state authorize waiver of professional</i>	Yes, under EMAC and SREMAC, but no waiver	Yes, under EMAC, SREMAC, and other	Yes, under EMAC and SREMAC. Licensure

<b><i>Legal Issue</i></b>	<b>South Carolina</b>	<b>Kentucky</b>	<b>Arkansas</b>
<i>licensure requirements during declared emergencies?</i>	is stated under emergency declaration laws.*	emergency management mutual aid agreements. (Ky. Rev. Stat. § 39A.260(7)).*	requirements can be waived for emergency services workers licensed in another state. Waiver of licensure requirements does not apply to medical licenses, except in cases of first aid treatment. (Ark. Code Ann. § 12-75-128(e)).
<i>Does the state offer any statutory reemployment protections?</i>	Yes, for state employees who are certified disaster service volunteers with the American Red Cross. (S.C. Admin. Code 19-712.01(C)).	Yes, for state employees who are certified disaster service volunteers with the American Red Cross. (Ky. Rev. Stat. § 61.395).	Yes, for state employees who are certified disaster service volunteers with the American Red Cross. (Ark. Code Ann. § 12-85-102).

\* The availability of waivers of licensure requirements varies across professions. A full authorization of waivers of licensure requirements may be dependent on the credentials of the individual health professional and a determination by the State licensure board. For more information on the availability of waivers for particular licensed health professions, please contact your state licensing board.