



The Center for Law & the Public's Health at Georgetown & Johns Hopkins Universities

CDC Collaborating Center Promoting Health through Law
WHO/PAHO Collaborating Center on Public Health Law and Human Rights

Hampton House, Room 588
624 North Broadway
Baltimore, Maryland 21205
www.publichealthlaw.net
(410) 955-7624; 410-614-9055 [fax]

MEMORANDUM

Hurricane Katrina Response

Deployment of Volunteers through EMAC vs. DHHS under ESF-8

In response to the current and impending use of volunteer health professionals (VHPs) in the Gulf Coast region impacted most significantly by Hurricane Katrina, the *Center for Law and the Public's Health (Center)* has drafted a brief analysis of the differences between the deployment of volunteers under the Emergency Management Assistance Compact (EMAC) and federal avenues, including the Department of Health and Human Services (DHHS) powers under ESF-8 and the National Response Plan.

Disclaimer - *This information does not represent the official legal positions of the 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.*

Deployment of Volunteers by DHHS under ESF-8

DHHS has the power to deploy volunteer health personnel to contribute to medical responses to an emergency pursuant to ESF-8 of the National Response Plan. At present, federal volunteers may be deployed by DHHS through two different avenues:

1. Many volunteers may be deployed through the National Disaster Medical System (NDMS) as intermittent disaster response personnel. They are entitled to certain federal legal protections including immunization from liability, workers' compensation coverage, and reemployment protections. For a discussion of the legal protections available to intermittent disaster response personnel, please see the *Center's* memo titled "Hurricane Katrina Response: Legal Protections for Intermittent Disaster Response Personnel under a Federal Declaration of Public Health Emergency," available at <http://www.publichealthlaw.net/Research/Katrina.html> (see Memo 1).
2. In response to Hurricane Katrina, DHHS has established a program to recruit additional health care professionals and relief personnel workers to assist in the response efforts. See U.S. Dep't. of Health and Human Services, Health Care Professionals and Relief Personnel Worker Page, available at <https://volunteer.ccrf.hhs.gov/> (last visited Sept. 15, 2005). VHPs recruited through this program will be considered non-paid temporary federal employees under Schedule A of the

Excepted Service. VHPs recruited through this program will be entitled to liability protection and workers' compensation coverage through the federal government. However, VHPs are not entitled to re-employment protection under federal law. They will have to use their own vacation time from their regular job or seek some exemption from their regular employer to participate without fear of it affecting their current employment status. For a more detailed discussion of the legal protections available to these volunteers, please see the *Center's* Memo titled "Legal Protections for Federalized Volunteer Health Personnel under a Federal Declaration of Public Health Emergency," available at <http://www.publichealthlaw.net/Research/Katrina.htm>.

Deployment of Volunteers at the State Level Under EMAC

The Emergency Management Assistance Compact (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. The full text of the Model EMAC legislation can be found on the web at <http://www.emacweb.org/?13>.

One of the crucial elements of mutual assistance under EMAC during an emergency is the sharing of emergency management and volunteer health personnel. EMAC extends the following legal protections to personnel being deployed under its provisions:

- Waiver of professional licensure requirements for individuals licensed in another party state;
- Immunization from civil liability for good faith acts by officers or employees of a party state acting pursuant to EMAC. Good faith acts do not include willful misconduct, gross negligence or recklessness;
- Workers' compensation coverage for injuries or death sustained by members of a state's emergency forces while rendering assistance pursuant to EMAC (provided by the home state).
- The host state must afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are given forces of the state in which they are performing emergency services.

These legal provisions are affirmatively set forth by EMAC, preventing any uncertainty as to the scope of available protections for volunteer health personnel being deployed pursuant to EMAC. However, it is important to note that these protections will not be available to volunteers unless they are considered officers or employees of a party state. Thus, to take advantage of the protections offered by EMAC, volunteers must enter into volunteer services agreements (VSA) or memoranda of understanding with their home state. Through these agreements the home state can extend the legal protections available under EMAC to volunteers. Such agreements may be modeled after those used for the incorporation of local assets into state EMAC responses.

For more discussion of the utilization of VSAs under EMAC for the incorporation of local assets into state responses, including sample agreements, please see the *Center's* memo titled "Hurricane Katrina Response: Incorporation of Local Assets into a State Emergency Management Assistance Compact (EMAC) Response," available at <http://www.publichealthlaw.net/Research/PDF/Katrina%20-20Local%20Assets%20and%20EMAC.pdf>.

Conclusions

The federal and state avenues for deployment of volunteers offer different degrees of legal protections for the volunteers themselves. The table below outlines the legal protections available for volunteers deployed by the federal government under ESF-8 and EMAC.

LEGAL PROTECTIONS AVAILABLE FOR VOLUNTEER HEALTH PERSONNEL UNDER ESF-8 AND EMAC

	Licensure Waivers	Liability Protections	Workers' Compensation	Reemployment Protection
<i>Federal Intermittent Disaster Response Personnel – NDMS</i>	Yes	Yes	Yes	Yes
<i>Federal Temporary Employees – Schedule A, Excepted Service</i>	Yes	Yes	Yes	No.
<i>State Volunteers under EMAC</i>	Yes, with VSA	Yes, with VSA	Yes, with VSA	Dependent on state law

As indicated by the table above, all three avenues of deployment offer similar levels of volunteer protection. Both federal avenues provide licensure waivers, liability protections and workers' compensation coverage. However, only federal volunteers deployed as intermittent disaster response personnel with the PHS 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 will be dependent on the terms of the VSA.

We hope that these brief comments are helpful. Please let us know if you have any questions.

Date: September 15, 2005

James G. Hodge, Jr., J.D., LL.M.
Executive Director
jhodge@jhsph.edu

Lance A. Gable, J.D., M.P.H.
Senior Fellow
gable1@law.georgetown.edu

Stephanie H. Cálves, J.D., M.P.H.
Senior Researcher