



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

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MEMORANDUM

Hurricane Katrina Response

Legal Protections for Intermittent Disaster Response Personnel under a Federal Declaration of Public Health Emergency

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 summary of legal protections applicable to VHPs hired by the federal government under a federal Declaration of Public Health Emergency.

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.*

Federal Declaration of a Public Health Emergency

The Secretary of Health and Human Services (HHS) has the authority to declare a public health emergency under section 319 of the Public Health Act (42 USCA 247d). On August 31, 2005, Secretary Leavitt declared a public health emergency pursuant to this section in response to the aftermath of Hurricane Katrina. This declaration vests the Secretary with certain spending powers to issue grants and provide response assistance. Relevant statutory language is as follows:

“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 outbreaks 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 as described in paragraphs (1) and (2).”

The declaration terminates after 90 days or upon the date previously determined by the Secretary, whichever comes first. Following such a declaration, the Secretary must submit details of the declaration to Congress, within 48 hours.

Hiring of Intermittent Disaster-response Personnel

The Stafford Act vests federal agencies with the power to appoint temporary personnel in the event of a public health emergency or disaster. *See* 42 USC 5159(b). This broad grant of authority permits federal agencies to appoint personnel in advance of or following the occurrence of a disaster to carry out disaster relief activities. *See Id.* These personnel may be employed by any federal agency involved in the disaster relief activities, including the Federal Emergency Management Agency (FEMA) and the Department of Health and Human Services (DHHS).

Under 42 USC 300hh-11(d)(1), HHS' Secretary is specifically empowered to appoint individuals to serve as intermittent disaster response personnel of the National Disaster Medical System (NDMS) in accordance with applicable civil service laws and regulations. Many of the VHPs responding to Hurricane Katrina through the NDMS, including members of disaster medical assistance teams (DMAT), are considered intermittent disaster response personnel and enjoy corresponding legal protections. These intermittent personnel are considered employees of the U.S. Public Health Service (who perform medical, surgical, dental, or other medical functions) for purposes of liability and workers' compensation protections (further explained below). Limited status as an intermittent disaster-response appointee does not render the appointee as an HHS employee for any other purposes.

Liability Protections

Intermittent disaster-response personnel benefit from the same immunity from civil liability granted to employees of the U.S. Public Health Service. This effectively means that the only remedy for damages for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by any commissioned officer or employee of the Public Health Service (acting within the scope of office or employment) is against the United States, and not against the officer or employee (or her estate) whose act or omission gave rise to the claim. The U.S. Attorney General is also required to defend these individuals. 42 USC 233(a).

Compensation for Work-related Injuries

An intermittent disaster-response appointee shall, while acting in the scope of such appointment, be considered to be an employee of the Public Health Service. Any injury sustained by the appointee shall be deemed "in the performance of duty," (for purposes of 5 USC 8101 et seq.), and thus covered under the federal workers' compensation program. In the event of an injury to an appointee, the U.S. Secretary of Labor is responsible for determining whether the appointee is entitled to compensation or other benefits in accordance with 5 USC 8101 et seq. *See* 42 USC 300hh-11(e)(1)-(2).

Employment and Reemployment Rights

Activation of intermittent disaster-response appointees is deemed "service in the uniformed services" for the purposes of securing employment and reemployment rights of individuals who have performed service in the uniformed services (regardless of whether the individual is compensated). *See* 42 USC 300hh-11(e)(3).

We note that additional federal laws may apply, each of which are subject to interpretation by relevant federal agencies. Please let us know if you have any questions regarding the information provided in this memorandum.

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