

## Volunteers, Liability and Liability Protections

### Fact Sheet

#### Overview

Volunteers and the entities that recruit, deploy, and manage volunteers can be subject to liability. Volunteers are legally responsible for their own acts or omissions and can face civil tort liability or criminal penalty. Immunity is a legal protection against liability and may be asserted as a defense against liability claims. Providing liability protections to volunteers helps ensure that there are adequate numbers of volunteers to participate in emergency preparedness and response efforts. A volunteer's protection from liability often depends on the nature of the services provided and the emergency response program through which the volunteer is deployed.

#### Liability and Emergency Response

A volunteer and the entity that recruits, trains, deploys and manages the volunteer, e.g., a business or nonprofit, are legally responsible for their own acts or omissions. Volunteers and entities may also be vicariously liable for the acts or omissions of a person under their control. Liability can arise under a number of legal theories; most common is civil tort liability.

A tort is an action in which an actor (i.e., a person or entity) either intentionally or unintentionally causes harm to another person or property. Intentional torts occur when an actor intends to harm a person or property. Unintentional torts occur when an actor harms another person or property but did not intend the harm. Ordinary negligence is an unintentional tort that occurs when a volunteer or entity has a duty to another, breaches that duty through an act or omission to act, and causes direct harm or damages to a person or property. Gross negligence differs from ordinary negligence and occurs when a volunteer's deliberate disregard of his duty and care causes unintended, unforeseen harm. Negligence in the volunteer management context may include: medical malpractice; failure to plan or prepare; breach of privacy and confidentiality; or premises liability. Willful or wanton conduct differs from both types of negligence and occurs when a volunteer's conscious disregard of duty and care causes foreseeable injury or harm. A volunteer or entity may be able to assert a defense of immunity against a tort claim. Statutory liability protections, as discussed below, are often limited to acts of ordinary negligence. Also, the contributory negligence of the injured person can be a defense against a claim of gross negligence but not willful or wanton conduct.

#### Liability and Emergency Preparedness

Many of the legal provisions granting liability protection require that there be an emergency declaration. However, some may occur during emergency training exercises. Some states laws are broad enough to cover training exercises with liability protections. For example, New Jersey law extends liability protections to any acts or omissions "in connection with a public health emergency, or preparatory activities." (N.J. Stat. Ann. § 26:19-13(b)(1)).

#### Volunteers and the Health Insurance Portability and Accountability Act

The [Health Insurance Portability and Accountability Act \(HIPAA\) Privacy Rule](#)<sup>1</sup> protects a patient's personal health information (PHI) that is held by covered entities. Covered entities, including health plans, healthcare clearinghouses, and most healthcare providers (e.g., volunteer health professionals, known as VHPs), may not use or disclose PHI except as permitted or required by HIPAA's privacy regulations. Permitted disclosures of PHI include (1) for treatment, payment, and healthcare operations, (2) to federal, state, and local health departments for the purpose of preventing and controlling disease as authorized by law, (3) to notify family of location, condition, and death of an individual, (4) for disaster relief

purposes, (5) to prevent or lessen a serious threat to health or safety, (6) to law enforcement to locate a missing person, (7) to a medical examiner to identify a body, and (8) to a funeral director to carry out duties regarding the deceased. The HIPAA Privacy Rule remains in effect during emergencies unless the federal government suspends it. For a more detailed discussion of HIPAA's provisions as applied to use and disclosure of identifiable health information, see materials contained in the Public Health and Schools Toolkit.

### **Volunteer Immunity and Liability Protections**

State and federal laws form a patchwork of immunity for volunteers and entities. Immunity often depends on the nature of the services that the volunteer provides and the specific emergency response program or law under which the volunteer is deployed. The doctrine of sovereign immunity holds that a government cannot be sued for injuries resulting from its actions or inactions. Also, a government's employees and agents cannot be sued for injuries that occur in the course of their official duties. This concept of immunity, however, has been refined over time. In some states and at the federal level, injury claims are, with certain exceptions, expressly allowed by law through the Federal Tort Claims Act and state tort claims acts. In other states, the general concept of sovereign immunity is retained but the immunity is waived in certain instances, such as when an employee commits gross negligence, a crime, or violates an individual's constitutional rights.

Volunteer protection acts, or similar provisions, may also be found in state law. These laws limit the civil liability of uncompensated volunteers at nonprofit organizations or governmental entities under a specific set of circumstances. The protections provided by these volunteer protection laws are not limited to emergency response volunteers, but instead apply to all volunteers who meet the requirements set out by the law. The federal [Volunteer Protection Act](#)<sup>2</sup> is applicable in all the states, and states may enact their own volunteer protection laws that grant more protections than the federal law. See the ASTHO fact sheet on Volunteer Protection Acts and Good Samaritan Laws for more details.

The [Federal Tort Claims Act \(FTCA\)](#)<sup>3</sup> is generally the exclusive path by which individuals can seek compensation when injured by federal employees—including volunteers—acting within the scope of their responsibility. FTCA immunizes federal government volunteers from tort liability by substituting the federal government as the defendant in certain types of suits brought against the federal government. It does not cover volunteers in non-governmental settings. Coverage under FTCA does not require that an emergency declaration be in place before immunity attaches. FTCA contains a number of exceptions under which the United States may not be held liable, even though a private employer could be held liable under state law. Among these exceptions are: (1) the performance of discretionary functions; (2) commission of intentional torts; (3) damages caused by the United States imposing or establishing a quarantine; and (4) claims arising in a foreign country. Federal volunteers may still be sued for violating the U.S. Constitution or a federal statute that authorizes suit against an individual.

A number of other federal and state laws provide immunity and other liability protections for specific individuals, entities, or classes of actors for their roles in preparing for or responding to emergencies. These laws may address immunity for volunteers—especially healthcare volunteers—and organizations and individuals involved in making or administering vaccines, drugs, and other countermeasures to public health emergencies. Some federal laws confer federal immunity for activities conducted by state or local actors. For example, persons involved with certain activities related to countermeasures may be eligible for liability protection under the [Public Readiness and Emergency Preparedness Act \(PREP Act\)](#)<sup>4</sup> (e.g., manufacturers, distributors, program planners, and qualified persons who prescribe, administer, or dispense countermeasures). In some states, emergency authorization laws provide liability protections for volunteers and other responders. Mutual aid agreements in which states agree to exchange assistance during emergencies can also provide immunity if volunteers are deemed to be state employees, thereby making them eligible for governmental immunity.

Liability protections for organizations and entities are generally less robust than they are for individual volunteers. Some entity protections exist and more have been developed in recent years in recognition of the important role that businesses and nonprofit organizations play during emergencies. For example, in 2008 Georgia extended the protections of its Good Samaritan law to any natural person, association, organization or private entity. Over the past several years, there has been a growing movement around extending Good Samaritan laws to organizations and entities. One example of this is the [Public/Private Legal Preparedness Initiative](#).

Some states have adopted the [Uniform Emergency Volunteer Health Practitioners Act \(UEVHPA\)](#),<sup>5</sup> which provides two alternatives for VHP immunity. Alternative A offers clear immunity to VHPs for acts that occur while providing services during an emergency. Alternative B essentially replicates the existing liability protections found in the federal Volunteer Protection Act to the specific volunteers addressed in UEVHPA. UEVHPA does not immunize VHPs for acts that are willful, wanton, or grossly negligent in nature, or that occur while operating motor vehicles. UEVHPA liability protections become effective upon the state's emergency declaration.

The [Emergency Management Assistance Compact \(EMAC\)](#)<sup>6</sup> provides liability coverage only to "state officers and employees," but further informed the requester that some states have extended coverage to non-employees deployed under EMAC by extending the statutory definition of "state employee" to include EMAC-deployed volunteers.

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<sup>1</sup> Summary of HIPAA Privacy Rule. Available at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html>. Accessed on 11-1-2012.

<sup>2</sup> Volunteer Protection Act of 1997, Pub. L. No. 105-19. Codified at 42 U.S.C. §§ 14501. Available at <http://www.gpo.gov/fdsys/pkg/PLAW-105publ19/pdf/PLAW-105publ19.pdf>. Accessed 9-20-2012.

<sup>3</sup> Law, Science & Public Health Program at Louisiana State University. FTCA. Available at <http://biotech.law.lsu.edu/cases/immunity/ftca.htm>. Accessed 11-1-2012.

<sup>4</sup> Public Health Emergency. PREP Act. Available at <http://www.phe.gov/preparedness/legal/prepact/Pages/default.aspx>. Accessed on 11-1-2012.

<sup>5</sup> Uniform Law Commission. Emergency Volunteer Health Practitioners Act. Available at <http://www.uniformlaws.org/Act.aspx?title=Emergency%20Volunteer%20Health%20Practitioners>. Accessed on 11-1-2012.

<sup>6</sup> National Emergency Management Association. EMAC. Available at <http://www.emacweb.org/>. Accessed on 11-1-2012.