

Immunity Issues in Emergencies Fact Sheet

Overview

New and existing federal and state legal protections against liability address the concerns of volunteers and others involved in emergency response situations. These protections also serve an important public policy function: They ensure that there are adequate numbers of medical, public health, and other individuals and institutions who are willing and able to participate in response efforts. These various laws form a patchwork of liability protections. These protections, however, can be highly dependent on the nature of the services provided by the person (volunteer vs. paid employee) and the extent of protections provided under the program the person is participating in.

Liability Protections and Immunities

There are significant sources of liability protection available at the state and federal levels. Many of the protections described below were newly developed or refined within the last decade. Others are fundamental principles of governmental immunity that continue to evolve as our understanding of modern emergencies likewise evolves. What has emerged is a mosaic of protections that can provide varying degrees of coverage; the extent to which liability protections are available to an individual, entity, or class will depend on the actor, the law providing the protections, and the circumstances surrounding a particular emergency response.

Federal Liability Protections and Immunities

- **Federal Governmental/Sovereign Immunity**—The federal government’s sovereign immunity has its roots in English common law, which holds that the “king”—the state—cannot commit an illegal act and therefore cannot be sued. This doctrine has been modified through court decisions and the passage of the [Federal Tort Claims Act](#) to allow suits against federal government employees and agents in certain circumstances. In the context of emergency response, one way to protect volunteers is to designate them as unpaid employees of the federal government. In doing this, the volunteers would be able to assert the liability protections afforded to federal employees.
- **Volunteer Protection Act (VPA)**—The [VPA](#) provides immunity for ordinary negligence to volunteers of nonprofit organizations or governmental entities; it does not cover recklessness or gross negligence. The act does not require that an emergency declaration be in place for its protections to apply. VPA does not protect volunteers working in businesses (including for-profit hospitals) and organizational entities of any type (including nonprofit or governmental) that use volunteers. The act does not prohibit a nonprofit or governmental entity from suing its own volunteers.
- **Public Readiness and Emergency Preparedness Act (PREP Act)**—The [PREP Act](#) authorizes the HHS secretary to issue a declaration that provides immunity from tort liability for claims of loss caused by countermeasures (e.g., vaccines, drugs, products) against diseases or other threats of public health emergencies. A separate emergency determination under Public Health Service Act Section 319 or another statute is not required for PREP Act immunities to take effect. The act covers individual persons and entities involved in the manufacture, testing, distribution, administration, and use of covered countermeasures. The act does not protect against willful misconduct, violations of the Americans with Disabilities Act (ADA), or other civil rights violations.

State Liability Protections and Immunities

- **State Governmental/Sovereign Immunity**—State governments are immune from lawsuits under sovereign immunity conferred by the 11th Amendment of the U.S. Constitution. Like the federal government, some states have waived this immunity in certain circumstances through state tort claims or state claims acts. These acts generally immunize government employees from tort liability for acts or omissions committed within their scope of employment. Some states cap the amount of money damages available from a judgment against the state and prohibit the recovery of punitive damages against the state. Some states extend these protections to volunteers; other states declare volunteers to be unpaid state employees during an emergency.
- **Emergency Powers Statutes**—State emergency laws can trigger additional powers, suspend certain administrative requirements, and provide or enhance liability protections to specified responders upon a gubernatorial declaration of

emergency. There is a wide range of types and degree of coverage provided to volunteers under emergency powers statutes. The provisions can be broad or duplicative of other provisions in state law.

- **State General Volunteer Protection Statutes**—All states have some statutory protections for volunteers. The federal VPA (see above) preempts state laws that are less protective than the VPA, but allows states to pass laws with greater protections. Generally, like the VPA, these statutes do not require that an emergency declaration be in place, apply to uncompensated individual volunteers for nonprofit and governmental entities only, and apply only to individual persons and not to organizations.
- **State Healthcare Volunteer Protection Statutes**—Many states have also adopted specific liability protections for volunteer health professionals (VHPs) in addition to or to supplement their emergency powers and general volunteer protection statutes. Like the VPA, VHP protection statutes confer immunity from civil liability provided that certain conditions are met and are not dependent on the existence of an emergency declaration. Some states have adopted the [Uniform Emergency Volunteer Health Practitioners Act \(UEVHPA\)](#), which is a uniform model law conceived as a way to further supplement the number of VHPs who can rapidly respond to emergency events, particularly since traditional mutual aid approaches were viewed as insufficient to rapidly deploy VHPs. UEVHPA permits health professionals to register either in advance of or during an emergency to provide volunteer services in an enacting state through a governmentally established registration system (e.g., [ESAR-VHP](#) or [Medical Reserve Corps](#)), with registration systems established by disaster relief organizations or licensing boards, or national or multi-state systems established by associations of licensing boards or health professionals. UEVHPA liability protections become effective upon the state emergency declaration.
- **Good Samaritan Laws**—Good Samaritan laws can provide liability protection to volunteers who are near an emergency event and respond to help victims. No formal emergency declaration or activation of the volunteer as part of an emergency response force is required for Good Samaritan liability protections to attach. Every state has a Good Samaritan statute, but the actors eligible for coverage and qualifying circumstances under which care is delivered varies. Generally, Good Samaritan statutes cover the spontaneous delivery of aid and reduce the standard of care that would normally be required of the person supplying aid (e.g., a doctor or nurse helping a victim at the scene of an accident) to account for the exigent circumstances in which the care is being delivered.
- **Entity Liability Statutes**—While liability protections for organizations and entities are generally less robust than they are for individuals, some protections exist and more have been developed in recent years in acknowledgment of the important role that businesses and nonprofit organizations play during emergencies. Removing the potential for liability for entities that assist in an emergency response is seen as a way to ensure their participation in a response and therefore make planning for and responding to an event more efficient. Some states have adopted entity liability protections that extend liability protections to cover business and nonprofit entities acting in good faith during a declared emergency.
- **Mutual Aid Agreements**—Mutual aid agreements are mechanisms through which jurisdictions can provide assistance to other jurisdictions during emergencies. These agreements also generally include provisions for reimbursing expenses, providing liability protections to governmental personnel and volunteers who provide aid, and awarding compensation for injuries to personnel deployed under the agreement. The [Emergency Management Assistance Compact \(EMAC\)](#) is the most widely adopted mutual aid agreement in the United States and provides an organized structure through which a state can request aid from other states during an emergency. EMAC addresses reimbursement, liability, compensation, and licensure, among other issues. EMAC only applies to those persons properly dispatched in response to an EMAC request; immunity protections, compensation, and license reciprocity will not automatically extend to volunteers who provide services outside of EMAC. Volunteers would have to be made temporary government employees to be covered under EMAC.

Sources

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- Volunteer Protection Act of 1997. Pub. L. 105-19. Codified at 42 U.S.C. 14501-05.

This document was compiled from June-September 2011 and reflects the laws and programs current then. It reflects only portions of the laws relevant to public health emergencies and is not intended to be exhaustive of all relevant legal authority. This resource is for informational purposes only and is not intended as a substitute for professional legal or other advice. The document was funded by CDC Award No. 1U38HM000454 to the Association of State and Territorial Health Officials; Subcontractor PI Elliott, Logan Circle Policy Group LLC.