

**UNIFORM EMERGENCY VOLUNTEER  
HEALTH PRACTITIONERS ACT**  
(Last Revised or Amended in 2007)

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-SIXTEENTH YEAR  
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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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# **UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT**

## **Prefatory Note**

A primary purpose of this act is to establish a robust and redundant system to quickly and efficiently facilitate the deployment and use of licensed practitioners to provide health and veterinary services in response to declared emergencies. The act (1) establishes a system for the use of volunteer health practitioners capable of functioning autonomously even when routine methods of communication are disrupted; (2) provides reasonable safeguards to assure that volunteer health practitioners are appropriately licensed and regulated to protect the public's health; (3) allows states to regulate, direct, and restrict the scope and extent of services provided by volunteer health practitioners to promote disaster recovery operations; (4) provides limitations on the exposure of volunteer health practitioners to civil liability to create a legal environment conducive to volunteerism; and (5) allows volunteer health practitioners who suffer injury or death while providing services pursuant to this act the option to elect workers' compensation benefits from the host state if such coverage is not otherwise available.

The act was drafted in an expedited manner in the months immediately following the Gulf Coast Hurricanes of 2005 to remedy significant deficiencies in interstate and intrastate procedures used to authorize and regulate the deployment of public and private sector health practitioners to supplement the resources provided by state and local government employees and other first-responders. With the exception of Sections 11 and 12, which pertain to civil liability and workers' compensation protections, the act was approved in 2006. Sections 11 and 12 were approved in 2007.

Prior to Hurricanes Katrina and Rita, which in 2005 struck within a few short weeks of each other in Alabama, Florida, Louisiana, Mississippi, and Texas, many states had enacted emergency management laws to allow for emergency waiver or modifications of licensure standards to facilitate the interstate use of licensed health practitioners. Within the public sector, 49 of 50 states had also ratified the provisions of the Emergency Management Assistance Compact ("EMAC") which allowed for the deployment of licensed health practitioners employed by state and local governments to other jurisdictions to provide emergency services without having to be licensed in the affected jurisdictions. Today, all states have ratified EMAC.

The federal government supplemented these provisions of state law by allowing licensed health practitioners it employs on a permanent or temporary basis to respond to disasters and emergencies without compliance with state professional licensing requirements in the locations where their services are utilized. (10 U.S.C. 1094(d)(1)). Pursuant to federal law, two systems had also been established to facilitate the use of private sector health practitioners in response to emergencies, especially those mobilized by charitable non-governmental organizations active in disasters. As authorized by § 2801 of the Public Health Services Act, 42 U.S.C. § 300hh, local Medical Reserve Corps in hundreds of locations throughout the nation are able to recruit, train and promote the deployment of health practitioners in response to emergencies. Funding was also provided under § 319I of the Public Health Services Act, 42 U.S.C. § 247d-7b, to state governments by the Department of Health and Human Services (DHHS) to establish Emergency

Systems for Advance Registration of Volunteer Health Professionals (generally referred to as the “ESAR-VHP Programs”). Through these systems, volunteer health practitioners are recruited and registered in advance at the state level to respond to emergencies or disasters in their state of registration or across the nation. Participation in a local Medical Reserve Corps or registration with a state ESAR-VHP Program, however, does not result in the interstate recognition of licenses issued to volunteer health practitioners or provide other significant legal benefits in all jurisdictions.

When the Gulf Coast Hurricanes struck during 2005, the deficiencies in federal and state programs to facilitate the interstate use of volunteer health practitioners not employed by state or federal agencies became evident. While federal and state law recognized the need for interstate licensure reciprocity to fully utilize volunteer health practitioners, no uniform and well-understood system existed to effectively link the various public and private sector programs. Many health practitioners were not available to the large array of non-governmental organizations essential to all disaster relief organizations. For example, while most states issued emergency executive orders or proclamations allowing health practitioners licensed in other states to be used within their boundaries to provide emergency services, each state proceeded somewhat differently to establish and implement these programs. Hurricanes Katrina and Rita, for example, caused a severe breakdown of routine communications, resulting in an uncoordinated and ineffective response effort. Moreover, the absence of information regarding the operation of state emergency declarations generated confusion and uncertainty that significantly delayed the deployment of many volunteer health practitioners, thereby limiting the extent to which many others were able to provide valuable needed services. Significant concerns regarding exposure to civil liability and the availability of workers’ compensation protection also delayed and impeded the recruitment, deployment, and use of volunteers in many critical areas, resulting in limitations upon the scope of services provided by a substantial number of volunteers, especially physicians and nurses providing services in emergency shelters.

An electronic report posted to the website of the Metropolitan Medical Response System program, part of the federal Department of Homeland Security (DHS), summarizes the types of issues that arose:

Volunteer physicians are pouring in to care for the sick, but red tape is keeping hundreds of others from caring for Hurricane Katrina survivors. The North Carolina mobile hospital waiting to help ... offered impressive state-of-the-art medical care. It was developed with millions of tax dollars through the Office of Homeland Security after 9-11. With capacity for 113 beds, it is designed to handle disasters and mass casualties. It travels in a convoy that includes two 53-foot trailers, which on Sunday afternoon was parked on a gravel lot 70 miles north of New Orleans because Louisiana officials for several days would not let them deploy to the flooded city. ‘We have tried so hard to do the right thing. It took us 30 hours to get here,’ said one of the frustrated surgeons. That government officials can’t straighten out the mess and get them assigned to a relief effort now that they’re just a few miles away ‘is just mind-boggling,’ he said.

This doctor’s concerns were echoed by a director of the Northwest Medical Teams, a

Seattle based group of volunteer medical personnel, whose resources could not be deployed for several days following Hurricane Katrina because of uncertainty in licensure recognition. The concerns were reiterated by the Director of Emergency Services in New Orleans, who reported that, “We needed doctors...[and] [i]t was pandemonium in the area.” (*State Laws Become Roadblock to Medical Response in Crisis Services to New Orleans*, San Francisco Chronicle, September 2, 2006.)

Rather than treating the injured, sick, and infirm, some qualified physicians, nurses, and other licensed health practitioners (1) waited in long lines in often futile attempts to navigate through a semi-functioning bureaucracy; (2) provided other forms of assistance, such as general labor, which failed to utilize their desperately needed health skills; or (3) chose not to volunteer at all because of concerns over liability. Others proceeded to treat victims at the risk of violating existing state statutes and potentially facing criminal or administrative penalties or civil liability. Out-of-state practitioners providing medical treatment also faced the real possibility of noncoverage under their medical malpractice policies. These impediments became especially problematic in the aftermath of Hurricane Katrina when, according to the Council of State Governments (CSG), the most pressing need immediately after the storm was the availability of medical volunteers. As reported by a representative of the Louisiana Department of Health and Hospitals:

“The main thing we worked on was allowing out-of-state medical professionals who wanted to volunteer and come help, to waive the requirement of having them licensed in our state if they could show they were validly licensed in the state that they were coming from... We had to keep renewing that executive order because we had so much need for help.” (CSG Quarterly, Winter 2006).

Current systems are not sufficient to integrate public health and medical personnel. The Association of State and Territorial Health Officials (ASTHO) reported that the lack of national standards for the deployment and use of public health and medical emergency response personnel complicates the use of volunteer health practitioners for both requesting and deploying states. *State Mobilization of Health Personnel During the 2005 Hurricanes 1* (ASTHO, July 2006).

To respond to the lack of an effective system to facilitate the interstate deployment of health practitioners after the Gulf Coast Hurricanes of 2005, a number of different organizations quickly developed and implemented systems to promote the deployment of volunteer health practitioners. These efforts included actions taken by the Federation of State Medical Licensing Boards, the National Council of State Boards of Nursing, the Association of State and Provincial Psychology Licensing Boards, the American Medical Association, the American Nurses Association, the American Psychology Association, the National Association of Social Workers, the American Counseling Association, the National Association of Chain Drug Stores, and the American Veterinary Medicine Association. The American Red Cross was also able to effectively utilize its Disaster Human Resources System that had been previously established to create a network of volunteers available to respond to disasters, including nurses and mental health workers whose licensure status was reviewed and evaluated by the Red Cross prior to their deployment. Notwithstanding the efforts of these groups and organizations, the legal status

of many health practitioners remained unclear. Many practitioners and organizations also felt compelled to limit the scope of the services they provided because of concerns about professional licensing sanctions and civil liability.

After the more immediate response efforts associated with Hurricanes Katrina and Rita were complete, the National Conference of Commissioners on Uniform State Laws appointed a Study Committee which convened a meeting in February 2006 (hosted by the American Red Cross) to determine if the development of a uniform state law could help remedy these problems. Participants included most of the national groups and organizations who helped deploy health practitioners during the disaster, as well as representatives of the National Emergency Management Association, the National Governors' Association, the Association of State and Territorial Health Officials, the American Public Health Association, the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities, and various sections and committees of the American Bar Association. At the meeting, a unanimous consensus emerged that the National Conference should appoint a Drafting Committee and present proposals for consideration at its 2006 Annual Meeting.

Subsequently, a Drafting Committee was appointed by the Conference which, after two Drafting Committee meetings and multiple telephone conferences and informal consultations with its advisors, presented its recommendations to the 2006 Annual Meeting of the Conference. After extensive debate and further revisions to the Committee's recommendations, the Conference waived its usual practice of requiring the consideration of uniform laws at two or more Annual Meetings and approved the act, other than Sections 11 and 12, on July 13, 2006. In August 2006, the American Bar Association's House of Delegates added the act to its agenda for expedited consideration and, after discussion, unanimously endorsed it. Provisions were added to the act dealing with issues of civil liability and workers' compensation by the Conference in 2007.

While the magnitude of the emergency presented by Hurricanes Katrina and Rita exceeded the scope of disasters experienced in this country for many decades, foreseeable emerging events pose similar threats. Future storms (especially in heavily-populated areas); major earthquakes in San Francisco, Los Angeles or other heavily urbanized areas; volcanic eruptions in the Pacific Northwest; tidal waves on the east and west coasts; incidents of terrorism involving weapons of mass destruction, including nuclear, biological and chemical agents; and pandemic influenza may overwhelm the resources of local disaster health delivery systems. To help meet patient surge capacity and protect the public's health, reliance on private sector health practitioners and nongovernmental relief organizations will be needed. This act seeks to remedy defects in current state laws to effectively utilize private sector volunteers to meet these needs.

In developing this act, the Drafting Committee and its many advisors sought to pursue the following major policy objectives:

- The act seeks to make volunteer health practitioners available for deployment in response to emergency declarations as quickly as possible without the necessity for affirmative actions on the part of host states, while still allowing host states to act when necessary to limit, restrict, and regulate the use of volunteer health practitioners within their

boundaries.

- To protect the public health and safety, the act requires that, prior to deployment, volunteers must be registered with public or private systems capable of determining that they have been properly licensed and are in good standing with their principal jurisdiction of practice and of communicating this information to host states' governments and entities utilizing the services of volunteers. The use of registration systems is intended to (1) discourage the uncoordinated use of "spontaneous volunteers" who may independently travel to the scene of a disaster without the support of public or private emergency response agencies, and (2) promote the recruitment and training of volunteers in advance of emergency declarations, while also allowing and facilitating additional registrations at the time of an emergency.
- The act is intended to allow volunteers to register with systems located throughout the country, rather than requiring registration in each affected host state, and to accommodate and facilitate the use of the multiple different types of registration systems that continue to be developed and expanded by public and private agencies. Registration systems may be established, however, only by governmental agencies or by private organizations that operate on a national or regional basis in affiliation with disaster relief or healthcare organizations that have demonstrated their ability to responsibly recruit, train and promote the deployment of volunteer health practitioners.
- To alleviate confusion and uncertainty regarding the types of services that may be provided by volunteer health practitioners, the act requires volunteers to limit their practice to activities for which they are licensed, properly trained, and qualified to perform. Further, volunteer health practitioners must conform to scope-of-practice authorizations and restrictions imposed by the laws of host states, disaster response agencies and organizations, and host entities. Coextensively, host states can modify the activities of practitioners as necessary to respond to emergency conditions.
- To properly regulate the activities of volunteer health practitioners, the act vests authority over out-of-state volunteers in the licensing boards and agencies of host jurisdictions, while also requiring the reporting of unprofessional conduct by host states to licensing jurisdictions, thereby confirming the ability of licensing jurisdictions to impose sanctions upon professionals for unprofessional conduct that occurs outside of their boundaries. Licensing boards and agencies are required, however, to consider the unique exigent circumstances often created by emergencies and to recognize the limitations upon the communications that may occur which may result in incomplete knowledge regarding any limitations upon the activities of volunteer practitioners.
- Finally, the act is not intended to supplant state emergency management laws or to establish new systems for the coordination and delivery of emergency response services. Instead, host entities using volunteer health practitioners are required to coordinate their activities with local agencies to the extent and in the manner otherwise required by state law.

In addition to assisting states in utilizing volunteers, the act addresses two additional

important topics: (1) whether and to what extent volunteer health practitioners and entities deploying, registering, and using them are responsible for civil claims based on a practitioner's act or omission in providing health or veterinary services (Section 11); and (2) whether and to what extent volunteer health practitioners should receive workers' compensation benefits in the event of injury or death while providing such services (Section 12).

The risk of exposure to liability for malpractice and the availability of workers' compensation benefits are matters of significant concern to all volunteer health practitioners. These issues, however, are particularly important to practitioners providing health or veterinary services amidst the challenging and sub-optimal conditions that exist during emergencies. During emergencies, practitioners often must provide services without access to the resources customarily available to them. They may also have to practice outside their usual fields of expertise and be unable to take all actions reasonably necessary to treat individual patients because of the greater public health need to allocate scarce health care resources efficiently, thereby reducing overall rates of morbidity and mortality.

Practitioners also face greater risks of physical and psychological injuries and death when providing services in emergency settings. In these circumstances, uncertainty regarding interstate variations in expected standards of care, limits of liability, and the availability of workers' compensation coverage may deter qualified practitioners from participating in emergency responses. Even if practitioners are willing to serve, the entities that deploy and use them may be inhibited in doing so by their own liability concerns. The American Red Cross deploys thousands of volunteers each year in response to natural disasters and other public health emergencies. In its pandemic flu planning guidance, the Red Cross reported that, "We are not able to commit Red Cross volunteers to local public health overflow facilities without appropriate worker protections, including *liability coverage and workers safety measures*." (emphasis added). American Red Cross. Pandemic Influenza Planning Guidance: Update on Worker Safety; Additional Mass Care Planning Tools (2007). Following Hurricanes Katrina and Rita, the Medical Reserve Corps reported that health professionals deployed to Red Cross shelters were unable to provide more than basic health services to shelter residents because of liability concerns. Medical Reserve Corps Response to the 2005 Hurricanes; Final Report, March 13, 2006; 18.

Many existing laws at the federal and state levels recognize the need to provide some civil liability protections or workers' compensation benefits for volunteers. All 50 states have now entered into the Emergency Management Assistance Compact (EMAC), which provides immunity from negligence-based liability claims to state and certain local government employees deployed by one state to another in response to disasters and emergencies. All states have also enacted an array of "Good Samaritan" laws to protect spontaneous volunteers at the scenes of local emergencies. Many states have also granted immunities to other individuals engaged in disaster relief and civil defense activities, and a significant number of states have extended immunities to groups and organizations providing charitable, emergency or disaster relief services.<sup>1</sup> Unfortunately, the applicability of these laws to volunteer health practitioners as

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<sup>1</sup> Many states have extended immunities to groups and organizations providing charitable, emergency or disaster relief services. See e.g., Ala. Code § 6-5-332f (entities engaged in mine rescue operations, persons providing emergency medical care to victims of cardiac arrest, and architectural firms participating in emergency

defined by the UEVHPA is often unclear, leading to a confusing patchwork of legal protections in limited settings. Hodge, JG, Gable, LA, Calves, S. Volunteer health professionals and emergencies: Assessing and transforming the legal environment. *Biosecurity and Bioterrorism* 2005; 3:3: 216-223.

In determining whether and how best to provide protection from civil liability claims, states must balance and weigh important and competing, legitimate interests. Volunteer health practitioners and the entities that deploy and use them consistently report a need for a legal regime that enables them to provide services during emergencies without excessive concerns over liability. At the same time, persons receiving health services have an expectation of reasonable compensation for harms resulting from negligence. Hodge, J.G., Pepe, R.P., Henning, W.H. Voluntarism in the wake of hurricane Katrina: The Uniform Emergency Volunteer Health Practitioners Act. *Disaster Medicine and Public Health Preparedness* 2007; 1:1: 44-50. Some victims' advocates, while acknowledging the benefits associated with the degree of civil liability relief provided by the federal Volunteer Protection Act, also express the strong belief that volunteers will respond to emergencies regardless of whether additional civil liability protections are provided, that very few claims are asserted against volunteer health practitioners and disaster relief organizations, and that it would be unfair and unreasonable to deprive individuals harmed by negligent acts of access to compensation because of what the advocates consider undocumented allegations about the impact of liability concerns upon relief operations.

After extensive consultation, fact-finding, and discussion, NCCUSL determined that empirical data are generally unavailable upon which to make firm judgments regarding (1) the actual impact of liability concerns upon rates of volunteerism; and (2) whether and to what extent volunteer health practitioners have actually been subject to liability claims. The Conference also determined that such information is unlikely to be generated in any useful and reliable form in the foreseeable future. Nonetheless, because of the widely held consensus that these issues are of vital public importance, the Conference determined that the UEVHPA should

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response activities); Del. Code Ann. tit. 10, § 3129 (entities engaged in disaster relief operations pursuant to a government contract); Ga. Code Ann. § 51-1-29.1 (health care providers voluntarily providing services without compensation); Idaho Code Ann. § 46-1017 (entities engaged in civil defense or disaster or emergency relief operations pursuant to a government contract); Iowa Code §135.147 (enacted May 11, 2007) (entities providing emergency care to disaster victims at the request or under orders from emergency management agencies); Kan. Stat. Ann. § 60-42.01 (architectural firms); La. Rev. Stat. Ann. § 9:2793.3 -.7 (designated charitable organizations gratuitously rendering disaster relief services); N.C. Gen. Stat. § 90-21.11, 21,14 and 21.16 (uncompensated volunteer healthcare providers); N.J. Stat. Ann. § 2A:53A-7 (charitable, religious and educational non-profit organizations); 35 Pa. Cons. Stat. §§ 7019, 7021.9, 7704, 42 Pa. Cons. Stat. § 8336 (telephone companies providing emergency notifications, entities under government contracts to provide emergency relief services or who allow the use of real property without compensation for emergency response activities, persons providing uncompensated hazardous materials emergency response services); R.I. Gen. Laws §§ 5-1-16, 5-8-25, 5-51-18, 23-4.1-12, 23-17.6-5, 23-28.20-12 (architectural and engineer firms voluntarily rendering services during disasters, organizations providing emergency medical services, and entities providing uncompensated voluntary services in response to emergencies involving liquefied petroleum gas); Tex. Civ. Prac. & Rem. Code Ann. §§ 74.151, 78.053, 79.002, 79.003 (entities providing uncompensated medical care, volunteer fire departments, and entities providing uncompensated hazardous materials response or disaster relief services); Vt. Stat. Ann., tit. 20, § 20 (entities involved in emergency management activities; and Va. Code Ann. §§ 8.02-225(E), 8.01-255.01(B), 44.126-23 (health care providers administering vaccines, entities credentialing healthcare providers for emergencies, and private agencies engaged in providing emergency services).

clarify the extent to which volunteer health practitioners and the entities engaged in deploying, registering, and using them will be exposed to civil liability. While the Conference concluded that the fundamental policy decision regarding the level of protection to be provided should be left to the states, it also concluded that the failure to include provisions clearly defining the scope of liability exposure would create a significant risk that many highly skilled practitioners with the expertise most needed in effective relief operations would be deterred from volunteering in emergencies. Moreover, such deterrence would create a significant risk that adequate health services needed to reduce morbidity and mortality within affected populations would not be available.

This act provides for some level of liability protection under two alternative sets of rules. Alternative A to Section 11 provides protection to practitioners based upon their negligent acts or omissions in providing health or veterinary services pursuant to the act and also insulates the entities that deploy and use them from vicarious liability for those acts or omissions. Alternative A is based upon the rationale that private sector volunteer health practitioners and entities providing vital health or veterinary services during emergencies deserve the same protections and privileges as states and public employees whose resources and efforts they supplement and complement. Nongovernmental volunteer health practitioners undertake essentially the same risks and provide the same services as their governmental counterparts.

Alternative B clarifies that the protections provided to uncompensated volunteers by the federal Volunteer Protection Act, 42 U.S.C. § 14501 *et seq.*, extend to uncompensated volunteer health practitioners under the UEVHPA. This alternative does not address the issue of vicarious liability of entities, leaving the matter to existing state law.

For each alternative, specific actions of volunteers are excluded from liability protections, including intentional torts, willful misconduct, or wanton, grossly negligent, reckless, or criminal conduct. In addition, each alternative provides some liability protection for persons that operate, use, or rely upon information provided by a volunteer health practitioner registration system.

In providing a set of alternatives for States to determine the extent to which volunteer practitioners and entities deploying and using them will be exposed to and immune from civil liability, it is NCCUSL's expectation that, over time, the comparative experiences of states adopting different alternatives will result in a more solid base of reliable data upon which more definitive policy recommendations may be developed. However, it is worthy to note that the proposed alternatives in Section 11 are based on existing approaches taken by numerous states or federal policymakers concerning the extension of liability protections to volunteers.

Concerning workers' compensation benefits, after similar consultation, fact-finding, and discussion, the Conference concluded that, as a last resort, some level of benefits should be provided to volunteer health practitioners by the state benefiting from their services. Thus, Section 12 provides that a volunteer health practitioner who provides health or veterinary services pursuant to the act and who is not otherwise entitled to workers' compensation or similar benefits under the laws of any state, including the host state, should be entitled to elect the same workers' compensation or similar benefits as employees of the host state. This includes medical benefits for physical or mental injury and benefits for loss of earnings, provided these

benefits would be available to an ordinary employee of the host state.

Under current law, many workers' compensation systems do not cover the activities of volunteers, either because they are not defined as "employees" or because they are acting outside the scope of their employment when volunteering. Although volunteer health practitioners are not employees of the host state in the traditional sense, it is appropriate to extend benefits to them because they are exposed to many of the same risks of harm as ordinary employees of the host state who are providing health or veterinary services during an emergency in the course and scope of their employment.

Most states have statutorily extended workers' compensation coverage to emergency volunteers, principally through emergency, disaster, or public health emergency laws. Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP) – Legal and Regulatory Issues, Presentation prepared by the *Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities* for the Department of Health and Human Services. Unfortunately, who may constitute a "volunteer" varies from state to state, and may not include private sector volunteer health practitioners. Coverage may be further limited to volunteers responding solely at the bequest of a state or local government, volunteers working under the close direction of state or local governments, or volunteers who satisfy an array of local registration and certification requirements. As a result, the actual availability of workers' compensation coverage for volunteer health practitioners as defined in the UEVHPA under current law is highly uncertain. Section 12 of this act addresses this lack of uniformity by recommending that all volunteer health practitioners have the protection that host states provide their employees when such benefits are not otherwise available to the practitioners through other workers' compensation plans or protections.

A version of this act with detailed reference notes ("*Annotated UEVHPA*") is available at [www.uevhp.org](http://www.uevhp.org).

## **UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT**

**SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Emergency Volunteer Health Practitioners Act.

**SECTION 2. DEFINITIONS.** In this [act]:

(1) “Disaster relief organization” means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(A) is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government or [name of appropriate governmental agency or agencies]; or

(B) regularly plans and conducts its activities in coordination with an agency of the federal government or [name of appropriate governmental agency or agencies].

(2) “Emergency” means an event or condition that is an [emergency, disaster, or public health emergency] under [designate the appropriate laws of this state, a political subdivision of this state, or a municipality or other local government within this state].

(3) “Emergency declaration” means a declaration of emergency issued by a person authorized to do so under the laws of this state [, a political subdivision of this state, or a municipality or other local government within this state].

(4) “Emergency Management Assistance Compact” means the interstate compact approved by Congress by Public Law No. 104-321, 110 Stat. 3877 [cite state statute, if any].

(5) “Entity” means a person other than an individual.

(6) “Health facility” means an entity licensed under the laws of this or another state to

provide health or veterinary services.

(7) “Health practitioner” means an individual licensed under the laws of this or another state to provide health or veterinary services.

(8) “Health services” means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(A) the following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

(i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(ii) counseling, assessment, procedures, or other services;

(B) sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and

(C) funeral, cremation, cemetery, or other mortuary services.

(9) “Host entity” means an entity operating in this state which uses volunteer health practitioners to respond to an emergency.

(10) “License” means authorization by a state to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health or veterinary services based upon a national certification issued by a public or private entity.

(11) “Person” means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(12) “Scope of practice” means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner’s services are rendered, including any conditions imposed by the licensing authority.

(13) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(14) “Veterinary services” means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(A) diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of vaccine, medicine, surgery, or therapy;

(B) use of a procedure for reproductive management; and

(C) monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

(15) “Volunteer health practitioner” means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. The term does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

***Legislative Note:** Definition of “emergency”:* The terms “emergency,” “disaster,” and “public health emergency” are the most commonly used terms to describe the circumstances that may lead to the issuance of an emergency declaration referred to in this [act]. States that use other terminology should insert the appropriate terminology into the first set of brackets. The second set of brackets should contain references to the specific statutes pursuant to which emergencies are declared by the state or political subdivisions, municipalities, or local governments within the state.

*Definition of “emergency declaration”:* The references to declarations issued by political subdivisions, municipalities or local governments should be used in states in which these entities are authorized to issue emergency declarations.

*Definition of “state”:* A state may expand the reach of this [act] by defining this term to include a foreign country, political subdivision of a foreign country, or Indian tribe or nation.

### **Comment**

1. A **disaster relief organization** is an entity that provides disaster relief services or assistance in response to an emergency declaration. For example, the American Red Cross, which has been chartered by Congress to provide emergency relief services, constitutes a disaster relief organization as the term is used in this act. Other members of the National Voluntary Organizations Active in Disaster, Inc. (NVOAD) that provide similar services may also be considered disaster relief organizations. The definition limits such organizations, however, only to those expressly designated in federal or state disaster relief plans, or which regularly plan and conduct their activities in coordination with state or federal agencies. As used in this context, the reference to “its activities” means emergency or disaster relief services that include the provision of health or veterinary services. This definition defines the term “disaster relief organization” narrowly to reflect the special rights and privileges afforded to disaster relief organizations by this act. Disaster relief organizations are one of only three types of private entities, including national or regional associations of healthcare licensing boards or health practitioners and health facilities providing comprehensive inpatient and outpatient care, that are authorized by Section 5(a)(4)(C) to establish and operate registration systems for volunteer health practitioners (without prior governmental approval). In addition, although generally the term “volunteer health practitioners” does not include individuals with a pre-existing employment relationship with a “host entity,” employees of disaster relief organizations acting as host entities may be classified as volunteer health practitioners when their regular place of employment is located in another state.

2. This act does not define the circumstances and conditions that constitute an **emergency**, but rather defers to other laws currently in effect in all states, including laws providing for the declaration of public health emergencies. In deciding which laws to cross reference within this definition, states should include laws using different terminology, such as a “disaster,” “crisis” or “catastrophe.” Because Section 4(a) allows states to limit or restrict the application of this act when issuing an emergency declaration, states should include within this definition all potentially applicable laws to accomplish the broad objectives of this act. No matter how a state defines “emergency,” its declaration is the trigger through which the

protections of this Act go into effect.

3. An **emergency declaration** is the official pronouncement made by a state or local official authorized to declare the existence of an “emergency” pursuant to laws referenced in paragraph 2 that authorizes the use, deployment, and protection of volunteer health practitioners who comply with the provisions of this uniform law. This act defers to other state laws incorporated into the definition of the term “emergency,” however, to establish the methods, procedures, and requirements for issuing and publishing an emergency declaration.

4. The **Emergency Management Assistance Compact (EMAC)**, which is currently in effect in all 50 states, specifies procedures for the use of governmental resources, including state and local employees who are health practitioners, to provide for mutual assistance between states to manage declared emergencies. This act supplements the provisions of EMAC and other state mutual aid compacts by authorizing the interstate use of volunteer health practitioners who are not state and local employees in same manner as government employees may be used under EMAC and other state compacts. In addition, Section 9 of this act authorizes the incorporation of private sector health practitioners into “state forces” deployed in response efforts through EMAC and other mutual aid agreements. The term EMAC includes the provisions of the Compact in effect at the time of adoption of this act and any amendments subsequently enacted to the Compact.

5. An **entity** may include any public or private legally recognized type of person, but does not include an individual. The term does not include individuals so as to distinguish the term “health facility” from the term “health practitioner.”

6. A **health facility** is an entity engaged in the provision of health or veterinary services in its ordinary course of business or activities. The term does not include individual health practitioners. Specific types of facilities are not listed within the definition to avoid a restrictive interpretation of the term to mean only facilities similar to the listed entities as provided by the statutory construction doctrine of *ejusdem generis*. Instead, all types of entities authorized by state law to provide health or veterinary services are defined as health facilities.

7. A **health practitioner** is an individual, not an entity, who is licensed in any state, including the host state, to provide health or veterinary services or who holds a national certificate that is recognized by the host state as equivalent to licensure for purposes of providing health services to individuals or human populations or veterinary services to animals or animal populations. The term makes reference to the laws of other states for the purpose of allowing practitioners licensed in other states to practice as volunteer health practitioners subject to the requirements and limitations provided by this act, including the limitations on their scope of practice as provided by Section 8(a). The inclusion of veterinary practitioners within the term recognizes the vital role that veterinary practitioners often serve in emergency response efforts (as was well recognized following Hurricane Katrina), but does not imply or suggest that veterinarians are authorized to provide human health services during emergencies, nor does it imply or suggest that nonveterinarians are authorized to provide veterinary services. The term includes professionals providing services to “populations” to make it clear that individuals licensed for the purpose of providing public health services, rather than services to individual

consumers, are included within the definition. Individual types of professions are not listed within the definition for the same reason that individual types of health facilities are not listed in Paragraph 6.

8. **Health services** are broadly defined, based on a similar definition of the term from the HIPAA Privacy Rule, 45 C.F.R. 160.103, to include those services provided by volunteer health practitioners that relate to the health or death of individuals or populations and that are necessary to respond to an emergency. They include direct patient health services, public health services, provision of pharmaceutical products, and mortuary services for the deceased. On an individual level, health services include transportation, diagnosis, treatment, and care for injuries, illness, diseases, or pain related to physical or mental impairments. On the population level, health services may include the identification of injuries and diseases, and an understanding of the etiology, prevalence, and incidence of diseases, for groups or members within the population. This may entail public health case finding through testing, and screening, or medical interventions (*e.g.*, physical examinations, compulsory treatment, immunizations, or directly observed therapy (DOT)). On a broader scale, states may implement traditional public health activities including surveillance, monitoring, and epidemiologic investigations. The term does not include services that do not provide direct health benefits to individuals or populations. For example, ancillary services (*e.g.*, administrative tasks, medical record keeping, transportation of medical supplies) are not health services for purposes of this act.

9. A **host entity** is a health entity, disaster relief organization, or other entity that uses volunteer health practitioners to provide health or veterinary services during an emergency. Unlike entities that facilitate the use or deployment of volunteers, the host entity is responsible for actually delivering health services to individuals or human populations or veterinary services to animals or animal populations during the emergency. Host entities may thus include disaster relief organizations, hospitals, clinics, emergency shelters, doctors' offices, outpatient centers, or any other places where volunteer health practitioners may provide health or veterinary services. Host entities must comply with the requirements of Section 4(c) to be authorized to use volunteer health practitioners and have the authority under Section 8(d) to restrict the types of services that volunteer health practitioners may provide.

10. A **license** is distinct from a non-governmental certification or other privately issued recognition that may be used to designate competency in a particular profession or area of practice. It is a state-granted designation that regulates the scope of practice. Licensing laws may either prohibit unlicensed persons from providing services reserved for licensed practitioners or prohibit unlicensed persons from holding themselves out to the public as a member of a profession. An authorization to provide health or veterinary services pursuant to a national certification is included in the definition to clarify that a tangible certificate or prior government authorization may not in some circumstances be necessary for a governmental permission to constitute a license. Nothing in this definition, however, is intended to allow individuals holding national certifications to provide health or veterinary services except as otherwise authorized by law. Instead, pursuant to Sections 8(a) and (e), an individual holding a national certification may function as a volunteer health practitioner only to the extent authorized to do so by the laws of the state in which the individual primarily practices and by the laws of the host state in which an emergency is declared.

11. A **person** is defined broadly to encompass individuals and entities.

12. **Scope of practice** is used to define the extent of the authorization provided to a volunteer health practitioner to provide health or veterinary services during an emergency. Scope of practice may be established by laws, regulations or policies established by licensure boards or other regulatory agencies of the state in which a practitioner is licensed and primarily engages in practice. Scope of practice also includes any conditions that may be imposed on the practitioner's authorization to practice, including instances where state law recognizes the existence of a license but declares practice privileges to be "inactive." The term is defined by reference to the laws of the state in which the principal part of a practitioner's services are provided to establish a single standard applicable to practitioners licensed to practice in multiple states. This act defers to relevant state laws to determine whether a practitioner with an inactive license may serve as a volunteer health practitioner. To the extent the law of the state in which an individual is licensed and primarily engages in practice allows a practitioner with an inactive license to practice, either generally, only during emergencies, or only in a volunteer capacity, such an individual may practice in a "host state" consistent with the requirements of this uniform law. On the other hand, if the law of the state in which an individual is licensed only allows an individual with an inactive license to practice if the license is renewed or reactivated (typically by satisfying continuing education requirements and paying additional registration fees), then the individual may only function as a volunteer health practitioner following the renewal or activation of the license.

13. A **state** is any territory or insular possession subject to the jurisdiction of the United States. States implementing this Act may also choose to include within the definition of "state" an Indian tribe, nation, or foreign government and its political subdivisions. States having entered into emergency response compacts with foreign jurisdictions (e.g., members of the New England Emergency Assistance Compact include Canadian Provinces) should consider expanding the definition to include such jurisdictions.

14. **Veterinary services** are services pertaining to the health or death of animals or animal populations as distinct from health services provided to humans or human populations. Veterinary services do include, however, the monitoring or treatment of zoonotic diseases in animals for the purposes of protecting human populations.

15. A **volunteer health practitioner** is an individual who voluntarily provides health or veterinary services during a declared emergency. Unlike many existing federal and state legal definitions of volunteers that require the individual act without compensation, this definition and the Act contain no such requirement. Thus, the volunteer status of a health practitioner is not compromised by any compensation awarded to the practitioner prior to, during the course of, or subsequent to the declared emergency. Such compensation, however, must not arise from a preexisting employment relationship with a host entity or affiliate unless the practitioner does not reside in the state in which the emergency is declared and is employed by a disaster relief organization providing health or veterinary services in that state while an emergency declaration is in effect.

This definition differs from many legal definitions of “volunteer” that often characterize a volunteer as an individual who does not receive compensation for services. The federal Volunteer Protection Act (VPA) affords volunteers various protections (including from civil liability), but they cannot be compensated beyond reimbursement for expenses incurred or minimal compensation. *See* 42 U.S.C. § 14505(6). In Colorado, for example, a volunteer may not receive compensation other than reimbursement for actual expenses incurred. C.R.S. 13-21-115.5 (3)(c)(I). This characterization also holds in many states that afford civil liability protections for volunteers. In Delaware, for example, only “medical providers who provide their services without compensation” are entitled to liability protections as volunteer health practitioners. 10 Del. C. § 8135 (c)(1) (2006).

This definition recognizes, however, that the principal basis for defining a volunteer health practitioner is not whether the practitioner is compensated but whether the practitioner’s actions are volitional. In other words, compensation outside an employment relationship with a host entity is inconsequential in establishing whether an individual is or is not a volunteer. What matters is that the volunteer is acting freely in choosing to provide health or veterinary services in emergency circumstances. This definition thus expands the pool of potential volunteer health practitioners who may enjoy the protections of this act to those who may be compensated in some way.

Part of the justification for this more expansive view of voluntarism relates to the positive effects of compensation to support volunteers during emergencies. Many prospective volunteer health practitioners are licensed individuals working in existing health facilities. They may seek to volunteer knowing that their existing employers will continue to compensate them even while they are away. The volunteers may be able to use their sick or vacation days for this purpose, or their employers may simply allow them to volunteer without using these benefits. Some disaster relief organizations may provide some nominal sums to volunteer health practitioners to support their efforts. Compensation in these or other instances encourages certain individuals, who may not otherwise be able to act, to involve themselves in relief efforts.

Many disaster relief entities may receive reimbursement for expenses incurred or services provided through particular government agencies. Sometimes, such expenditures can impede the participation of major volunteer organizations. The MRC, for example, reported that one barrier to the participation of some of its local units was that they were “not eligible for Federal Emergency Management Agency reimbursement for services rendered in an emergency (American Red Cross and Salvation Army are currently eligible).” *Medical Reserve Corps Hurricane Response Final Report* 18 (March 13, 2006). The Administration on Aging (AoA) reiterated that health providers “need to be reimbursed for care provided to patients in hurricane-affected areas and evacuee areas.” *Summary of Federal Payments Available for Providing Health Care Services to Hurricane Evacuees and Rebuilding Health Care Infrastructure 2* (Agency on Aging, October 2005). This is particularly necessary to “facilitate their ongoing operations and compensate for additional costs and unanticipated utilization of services.”

A preexisting employment relationship with a host entity to provide health or veterinary services in the host state precludes a health practitioner from being a “volunteer” for purposes of the act. This is distinct from the mere provision of compensation because the practitioner is

adhering to the terms of the employment contract. This is significant for a number of reasons. First, an individual cannot concurrently be an employee and a volunteer within a host entity. This would obfuscate the legal obligations and protections afforded under existing state laws. An employee has a duty to provide services that stems from the employment relationship.

Second, dual status as an employee and volunteer would undermine the purpose of, and protections afforded under, this act. The purpose of the act is to create an environment that integrates volunteer health practitioners into an emergency response. Converting employees into volunteers would be inconsistent with this objective by potentially negating preexisting duties of health practitioners. A health practitioner that was previously obligated to provide a particular service because of an employment relationship should not be encouraged to abscond from that responsibility upon the declaration of an emergency.

A unique situation may arise where a corporation conducts its business through multiple locations and deploys staff to provide health or veterinary services at a site that has been affected by the emergency. A pharmacy chain, for example, may have thousands of locations throughout the United States, each of which is owned by the corporation. Each employee at any store location is an employee of the larger corporation. During a large-scale event, some of the chain's stores could be overwhelmed with demands for prescription orders from existing and new patients. The corporation might seek to deploy pharmacists from out-of-state to voluntarily assist in stores or mobile emergency pharmacies within the geographic area impacted by the emergency. During a declared emergency, these pharmacists would qualify as "volunteer health practitioners." The employees that were under a preexisting employment contract with the store in the host state that received the assistance, however, would still be employees subject to the terms of their relationship with the corporation. These employees would not be considered volunteers due to their preexisting employment obligation to provide services in the host state.

The current definition waives the preexisting-employment exemption for out-of-state employees of disaster relief organizations. Disaster relief organizations are often nonprofit organizations that are self-sustaining and must unilaterally bear the costs associated with their efforts. This definition is in accord with the nature and role of disaster relief organizations in an emergency response and existing federal statutes acknowledging the same. The purpose of this exception is not to create a special class of employees but rather to recognize the vital role of disaster relief organizations that are asked by state or local authorities to oversee and manage emergency response efforts. For example, an individual employed by the Red Cross as a nurse in Alabama is required to be licensed by Alabama to engage in nursing in Alabama during an emergency, but is authorized to practice nursing for the Red Cross in California by this act during an emergency even if the individual is not licensed as a nurse by California.

### **SECTION 3. APPLICABILITY TO VOLUNTEER HEALTH PRACTITIONERS.**

This [act] applies to volunteer health practitioners registered with a registration system that complies with Section 5 and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect.

## Comment

Under existing state and local laws, an emergency is initiated with its declaration (as determined in accordance with existing state or local laws) and is terminated usually upon subsequent proclamation by an authorized state or local agency or official. The legal landscape for responding to natural disasters, public health threats, or other exigencies changes instantly with the declaration of a state of emergency. Accommodations must be made to ensure the efficient deployment and use of volunteer health practitioners to meet surge capacity in existing health facilities, emergency shelters, or other places where health or veterinary services are needed. This section authorizes volunteer health practitioners to provide health or veterinary services for the duration of the emergency and must be interpreted *in pari materia* with the other provisions of this act. As a result, this section only authorizes volunteer health practitioners to provide health or veterinary services in the state if all of the other requirements of the act are satisfied, such as registration, compliance with scope of practice limitations, and compliance with any modifications or restrictions imposed by the host state or host entity during an emergency.

This act applies only during the declared emergency, and thus a state that wants to invoke its provisions in anticipation of an impending disaster so that volunteer health practitioners are more readily available when the disaster occurs must declare an emergency under laws of the state other than this act. Special provisions were not included in this act to allow the use of volunteer health practitioners in advance of emergencies because most jurisdictions typically issue emergency declarations in advance of actual emergency events so as to facilitate the effective deployment of emergency response services. Similarly, special provisions are not included in this act to authorize the use of out-of-state practitioners in emergency planning exercises because planning exercises do not involve the actual provision of health or veterinary services for which health care licensing is typically required.

### **SECTION 4. REGULATION OF SERVICES DURING EMERGENCY.**

(a) While an emergency declaration is in effect, [name of appropriate governmental agency or agencies] may limit, restrict, or otherwise regulate:

- (1) the duration of practice by volunteer health practitioners;
- (2) the geographical areas in which volunteer health practitioners may practice;
- (3) the types of volunteer health practitioners who may practice; and
- (4) any other matters necessary to coordinate effectively the provision of health or

veterinary services during the emergency.

(b) An order issued pursuant to subsection (a) may take effect immediately, without prior

notice or comment, and is not a rule within the meaning of [state administrative procedures act].

(c) A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:

(1) consult and coordinate its activities with [name of the appropriate governmental agency or agencies] to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(2) comply with any laws other than this [act] relating to the management of emergency health or veterinary services, including [cite appropriate laws of this state].

### **Comment**

While Section 3 authorizes volunteer health practitioners to provide health or veterinary services during a declared emergency, Section 4(a) clarifies that these services may be subject to limits, restrictions, or regulations set forth by the appropriate emergency management or public health agency that is responsible for overseeing or managing emergency response efforts. These limits, restrictions, or regulations may relate to (1) the duration of practice by volunteer health practitioners, (2) the geographical areas in which volunteer health practitioners may practice, (3) the class or classes of volunteer health practitioners who may practice, and (4) any other matters necessary to coordinate effectively the provision of health or veterinary services. Additional restrictions concerning the type and scope of services provided by volunteer health practitioners by the state licensing board or other agency that regulates health practitioners are also permitted during the emergency pursuant to Section 8(c).

The provisions of Section 4(a) and 8(c) recognize that the services of volunteer health practitioners may be required only (1) for a portion of the period of time an emergency declaration is in effect; (2) in certain substantially affected geographic areas; or (3) in certain critically impacted professional fields. The power to limit or restrict the activities of volunteer health practitioners includes the authority to determine that no volunteer health or veterinary services are needed to respond to an emergency.

The approach taken by this act to authorize the use of volunteer health practitioners following any emergency declaration, unless otherwise ordered pursuant to Section 4(a) or 8(c), is intended to create a system that can function autonomously even when communications are disrupted or when public officials are forced to dedicate their time and attention to more pressing matters than coordinating volunteer health practitioners. This approach is consistent with many current disaster management plans which rely upon the deployment of resources by critical non-governmental organizations without a specific order, directive or request from government agencies. During the response to Hurricane Katrina, medical and public health professionals had to improvise and use their own initiative because efforts to deploy them from staging areas were

extremely time-consuming and failed to adequately get them to areas where their services were most needed. *The Federal Response to Hurricane Katrina: Lessons Learned* 46 (The White House, February 2006).

The provisions of this act presumptively allowing volunteer health practitioners to respond to emergencies unless directed otherwise are carefully balanced by the provisions of Section 4(c) which (1) require volunteer health practitioners to work through local “host entities” and (2) mandate host entities to consult and coordinate their activities with the agency(ies) responsible for managing the emergency response to ensure that all volunteer health practitioners are being used in an efficient and effective manner. Subsection (c)(1) is intended to encourage host entities to utilize the services of volunteer health practitioners in concert and to discourage host entities and the volunteers that provide care under them from acting pursuant to their own judgments where such judgments may conflict with the objectives as set forth by the appropriate government agency. Under subsection (c)(2), host entities must adhere to all laws relating to the management of emergency health or veterinary services. This caveat builds upon subsection (c)(1) by setting the initial parameters of conduct during the emergency response. Namely, the laws relating to the management of health or veterinary services in the host state shall govern unless they are modified or restricted by the appropriate state agency(ies) pursuant to Section 8. This act is not intended, however, to govern or control the extent to which host entities must utilize volunteer health practitioners under the direction and control of local emergency management agencies. Instead, it defers decisions regarding the extent with which emergency management services are coordinated and controlled to the other laws made applicable to host entities and volunteer health practitioners by subsection (c)(2).

## **SECTION 5. VOLUNTEER HEALTH PRACTITIONER REGISTRATION**

### **SYSTEMS.**

- (a) To qualify as a volunteer health practitioner registration system, a system must:
- (1) accept applications for the registration of volunteer health practitioners before or during an emergency;
  - (2) include information about the licensure and good standing of health practitioners which is accessible by authorized persons;
  - (3) be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this [act]; and
  - (4) meet one of the following conditions:

(A) be an emergency system for advance registration of volunteer health-care practitioners established by a state and funded through the Department of Health and Human Services under Section 319I of the Public Health Services Act, 42 USC Section 247d-7b [as amended];

(B) be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to Section 2801 of the Public Health Services Act, 42 U.S.C. Section 300hh [as amended];

(C) be operated by a:

(i) disaster relief organization;

(ii) licensing board;

(iii) national or regional association of licensing boards or health practitioners;

(iv) health facility that provides comprehensive inpatient and outpatient health-care services, including a tertiary care and teaching hospital; or

(v) governmental entity; or

(D) be designated by [name of appropriate agency or agencies] as a registration system for purposes of this [act].

(b) While an emergency declaration is in effect, [name of appropriate agency or agencies], a person authorized to act on behalf of [name of governmental agency or agencies], or a host entity, may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection (a). Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.

(c) Upon request of a person in this state authorized under subsection (b), or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

(d) A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

**Legislative Note:** *If this state uses a term other than “hospital” to describe a facility with similar functions, such as an “acute care facility”, the final phrase of subsection (a)(4)(C)(iv) should include a reference to this type of facility – for example, “including a tertiary care, teaching hospital, or acute care facility.”*

### **Comment**

Section 5 authorizes the use of each of the various types of registration systems found to be effective in responding to the Gulf Coast Hurricanes of 2005. These systems include not only federally sponsored local Medical Reserve Corps, ESAR-VHP systems, and other systems expressly created under federal or state laws, but also registration systems established by disaster relief organizations, such as Disaster Human Resources System of the American Red Cross; systems established by associations of the state licensing boards, such as the Federation of State Medical Licensing Boards, the National Council of State Boards of Nursing and the Association of State and Provincial Psychology Licensing Boards; systems established by national associations of health professions, including the American Medical Association, the American Nurses Association, the American Psychology Association, the National Association of Social Workers, the American Counseling Association, the National Association of Chain Drug Stores, and the American Veterinary Medicine Association; and systems established by major tertiary care hospital systems. This act allows each of these various types of organizations to establish and operate registration systems without explicit governmental approval because they have demonstrated the resources, competence and reliability to review and communicate information regarding the professional qualifications of health practitioners. In addition, the act recognizes registration systems operated by state governments or by any other organization granted approval to establish a registration system by any state.

This act does not require or authorize a state to designate or approve registration systems. The experience of the multiple entities that successfully recruited and verified the credentials following the Gulf Coast Hurricanes of 2005 showed that such a requirement is unnecessary and inefficient in deploying and utilizing volunteer health practitioners. Instead, this act empowers and legitimizes the operations of numerous types of public and nongovernmental organizations that have consistently demonstrated their ability to properly recruit, train, deploy and verify the

credentials of volunteer health practitioners.

This act designates three core responsibilities of registration systems. Each system must (1) facilitate the registration of volunteer health practitioners *prior* to, or during, the time their services may be needed; (2) maintain organized information about the volunteers that is accessible by authorized personnel; and (3) be capable of being used to verify the accuracy of information concerning whether the volunteers are licensed and in good standing. While registration systems may also perform other types of functions, such as recruiting and training volunteers or coordinating their deployment with states and disaster relief organizations, they are not required to do so to maintain as much flexibility as possible to authorize the operations of diverse types of registration systems able to deliver different types of resources that may be needed in response to emergencies. Similarly, this act does not prohibit or prevent registration systems from establishing additional registration requirements beyond the minimum requirements in subsection (a). For example, this act would not prevent a registration system from requiring specialized training for all individuals registered with a particular system or requiring the affiliation of registrants with one or more public or private disaster relief organizations. Likewise, this act does not require a particular registration system to accept all types of health care practitioners or from exercising its own discretion regarding whether to accept the registration of a particular practitioner.

Under subsection (a)(1), the requirement to facilitate registration prior to, or during, the time services are needed is necessary to (1) discourage the deployment of non-registered “spontaneous volunteers” at the time of a disaster, (2) encourage practitioners to register in advance of emergencies, and (3) give practitioners, if the system so provides, the opportunity to obtain specialized training appropriate to the provision of health or veterinary services in emergencies. This allows volunteers to integrate themselves into the existing response efforts and enables the managing agency to efficiently deploy forces to the appropriate affected areas.

In Oklahoma, shelters were set up to receive up to 5,000 evacuees from areas impacted by Hurricane Katrina in 2005. The Oklahoma State Department of Health, however, did not have the manpower to fully staff these shelters. To meet surge capacity, members of the state’s MRC units were contacted through the state-managed database, issued state identification, and deployed in a single day. *State Mobilization of Health Personnel During the 2005 Hurricanes 6* (ASTHO, July 2006). Moreover, the state utilized the MRC website to process over 3,000 calls from potential volunteers and track volunteers that had been deployed. This led to their effective utilization. Other examples underscore the vital roles that such organizations play in emergency response efforts.

The National Medical Reserve Corps office reported that one important factor that contributed to its success in response to Hurricane Katrina was that its “teams of volunteers were identified, credentialed, trained, and prepared in advance of the emergency.” *Medical Reserve Corps Hurricane Response Final Report 2* (March 13, 2006). The American Medical Association (AMA) collaborated with Dr. David J. Brailer, National Coordination for Health Information Technology, to expand KatrinaHealth.org, an electronic database of prescription medical records through which authorized pharmacists and physicians can access records of medications evacuees were using before the storm hit, including specific dosages. A report that

summarized the implementation challenges in utilizing KatrinaHealth included variations across states and between institutions which can “create havoc when disasters, evacuees, and volunteer providers cross jurisdictional boundaries.” *Lessons from KatrinaHealth* 19 (June 13, 2006). Few mechanisms existed to coordinate the large number of health practitioners willing to volunteer. In Dallas, emergency medical providers ultimately created “a new care network on the fly;” in Houston, they used the medical school’s existing open-source courseware to post messages and exchange information. *Lessons from KatrinaHealth* 20 (June 13, 2006). Despite the publicized numbers of registered federal volunteers, a doctor who worked in three different shelters and makeshift clinics in Mississippi for a total of thirty-four days reported that “these measures did not solve the coordination issues on the ground.” *Lessons from KatrinaHealth* 21 (June 13, 2006).

The National Association of County and City Health Officials (NACCHO) examined the response of five local health departments that assisted evacuees fleeing the Gulf coast in the wake of Hurricane Katrina. Although there were ample volunteers to assist in the recovery efforts, NACCHO observed that their contributions were not sufficiently planned and coordinated. “[P]rior and just-in-time training, assessment of knowledge and skills, and systematic assignments all must improve.” *Shelter from the Storm: Local Public Health Faces Katrina* 22 (NACCHO, February 2006). NACCHO further noted that “a greater national calamity, such as a smallpox outbreak, would require human resources beyond what public health professionals could deliver on their own.” *Shelter from the Storm: Local Public Health Faces Katrina* 22 (NACCHO, February 2006).

Spontaneous volunteers have, on occasion, stymied emergency response efforts and added to the existing burden facing health practitioners in charge of overseeing a specific disaster site. DHHS noted that after the attacks on September 11, 2001, thousands of spontaneous volunteers presented themselves at ground zero in New York City to provide medical assistance. In most cases, however, authorities were unable to distinguish qualified personnel from those that were not qualified. See *ESAR-VHP Interim Technical and Policy Guidelines, Standards, and Definitions* Section 1.2 (HRSA, June 2005). The unsolicited presentation of volunteers coupled with the lack of a coordinated mechanism to integrate their services reduced the effectiveness of the overall response effort. A former Director of New York’s Emergency Management Office, observed that “[V]olunteers just show[ed] up ... To accommodate them we had to set up another city. We had to feed them and take care of sanitation and other things. But we just couldn’t use them.” *Id.* Prior registration enables agencies to request, receive, and deploy the necessary volunteer personnel to wherever their services are required and integrate themselves into the ongoing response efforts.

This Act does not, however, mandate prior registration in recognition of the possibility that large scale disasters may create needs for more practitioners than those who register in advance. This is evident from response efforts for Hurricane Andrew in 1993 and the four storms during the hurricane season that struck Florida in 2004. In neither situation were response efforts completely sufficient to alleviate public health and individual health concerns. The large scale mortality and morbidity caused by Hurricane Katrina further demonstrated that what may be perceived as adequate preparation cannot compensate for unforeseeable circumstances. *Katrina as Prelude: Preparing for and Responding to Future Katrina-Class*

*Disturbances in the United States*, p.5, Testimony before the U.S. Senate Homeland Security and Governmental Affairs Committee submitted by Herman B. Leonard and Arnold M. Howitt (March 8, 2006). Therefore, a registration system must be able to allow volunteers to register during an emergency, as well as prior thereto.

ESAR-VHP is listed in subsection (a)(4)(A) as an example of a registration system that provides organized information to ensure an accurate assessment of a volunteer health practitioner's ability to provide health services during an emergency. These systems have arisen from a federal grant program authorized by Section 107 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Congress directed DHHS to "establish and maintain a system for the advance registration of health professionals, for the purpose of verifying the credentials, licenses, accreditations, and hospital privileges of such professionals when, during public health emergencies, the professionals volunteer to provide health services." In response, DHHS created the ESAR-VHP Program to assist states and U.S. territories to develop their emergency registration systems through the provision of grants and guidance. DHHS has distributed resources to nearly every state and many U.S. territories and developed guidelines and standards for these systems. Jurisdictions are responsible for designing, developing, and administering their respective systems consistent with federal guidelines.

Under subsection (a)(4)(B), a registration system operated by a Medical Reserve Corps (MRCs) is also sufficient. The MRCs program was created in 2002 as a community based and specialized component of Citizen Corps, part of the USA Freedom Corps initiative launched in January, 2002. The program's purpose is to pre-identify, train, and organize volunteer medical and public health practitioners to render services in conjunction with existing local emergency response programs. As of the Fall of 2006, there were 408 MRCs operating across the nation in ten regions. Some states explicitly reference MRC units via statutes that afford protection to volunteer health practitioners during an emergency. These states include Connecticut (Conn. Gen. Stat. § 19a-179b), North Carolina (N.C. Gen. Stat. § 1-539.11), Oklahoma (59 Okl. St. § 493.5, and 76 Okl. St. § 32), Utah (Utah Code. Ann. § 26A-1-126), and Virginia (Va. Code Ann. §§ 2.2-3601, 2.2-3605, 32.1-48.016, and 65.2-101). MRC units consist of personnel with and without a background in health services. The "medical" component of the units does not limit membership to medical professionals. Individuals without medical training are permitted to join and fill essential supporting roles. The protections of this act, however, only extend to volunteer health practitioners who are duly registered under Section 4 and adhere to the scope of practice requirements pursuant to Section 8.

Subsection (a)(4)(C) approves registration systems operated by disaster relief organizations, licensing boards, national and regional associations of licensing boards or health practitioners, or governmental entities. As used here, regional is a subset of national and means a multistate association of licensing boards or health practitioners. The entities listed typically use registration systems in their ordinary course of business or activities.

Subsection (a)(4)(C) also approves registration systems operated by comprehensive health facilities, which include public or private (for-profit or nonprofit) facilities that provide comprehensive inpatient or outpatient services on a regional basis. As used here, regional means that the facility draws from an extensive patient base that exceeds a single, small local

community. A comprehensive health facility is distinguishable from a health entity by the breadth of its health services as well as its regional base. As indicated in the act, this includes tertiary care and teaching hospitals. For purposes of this act, a registration system operated by such entities is subject to all the requirements of subsection (a)(1)-(3).

Subsection (a)(4)(D) authorizes the appropriate state agency or agencies to designate for the purposes of this act a registration system other than those set forth in subsections (a)(4)(A)-(C), provided these systems meet the essential requirements in subsection (a)(1)-(3).

Subsection (b) permits a state agency or its designee, or a host entity, to confirm the identity and status within a registration system of a volunteer health practitioner. Confirmation is strongly recommended, but not required, noting that potential exigencies may prevent confirmation in some instances. Confirmation is limited to identification and an assessment of good standing of volunteer health practitioners within the system. This provision is a security safeguard that allows state officials to ensure that volunteer health practitioners capable of providing health or veterinary services during an emergency are appropriately registered with a registration system. Another purpose of this provision is to prevent fraudulent attempts or acts of unlicensed individuals posing as qualified volunteer health practitioners during emergencies. The primary purpose, however, is to ensure the timely approval of registered volunteer health practitioners to provide health or veterinary services to individuals or populations affected by an emergency.

Subsection (b) does not, however, authorize states to review and approve the credentials and qualifications of individual volunteers or to establish requirements on a state-by-state basis to confirm the registration of volunteers. These authorizations or requirements may undermine a fundamental goal of the act to establish uniformity across states for the recognition of volunteer health practitioners that can function automatically if necessary (*e.g.* communications are disrupted) and access to state officials to secure authorizations is impossible or impractical during an emergency.

Cases may arise where personnel authorized to manage the emergency response are unaware of the identities of volunteer health practitioners and whether they are licensed or in good standing. Subsection (c) mandates any entity that uses a registration system to provide, upon request of an authorized person, the names of all volunteer health practitioners within the system and the most current status of their licensure and standing. This provision empowers authorized personnel to directly acquire information pertaining to the identities and qualifications of volunteers without resorting to additional requests or alternative procedures that may hinder the response efforts.

Subsection (d) grants host entities the authority to choose whether or not they will engage the services of a volunteer health practitioner in response to an emergency declaration. The decision to use a volunteer is not predicated on the mere affirmation of licensure and good standing. There may be many reasons why a host entity chooses not to use the services of a particular practitioner or class of practitioners. This may include, for example, ample availability of existing full-time or part-time employees or volunteers that are required to provide a particular service. As well, a host entity is under no legal obligation to engage the services of a volunteer

aside from any pre-existing agreements that may have been entered into by the relevant parties. This act does not set any additional requirements beyond those imposed upon individuals or entities that seek to avail themselves of the privileges and protections of the act.

**SECTION 6. RECOGNITION OF VOLUNTEER HEALTH PRACTITIONERS  
LICENSED IN OTHER STATES.**

(a) While an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with Section 5 and licensed and in good standing in the state upon which the practitioner's registration is based, may practice in this state to the extent authorized by this [act] as if the practitioner were licensed in this state.

(b) A volunteer health practitioner qualified under subsection (a) is not entitled to the protections of this [act] if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction.

**Comment**

This Section addresses the need for licensure recognition of volunteer health practitioners who are licensed outside the state in which an emergency is declared. Out-of-state volunteers can be a critical resource to meet surge capacity in the host jurisdiction. In providing explicit authorization for out-of-state health practitioners to provide services within a state during an emergency, this act follows existing precedent established by EMAC and numerous other existing state laws. For example, the Louisiana Health Emergency Powers Act, R.S. 29:769(e), provides for the temporary registration of certain health providers licensed in another jurisdiction of the United States. Louisiana's Department of Health and Hospitals may now issue temporary registrations to "licensed, certified, or registered" health practitioners in another jurisdiction whose licenses, certifications or registrations are "current and unrestricted and in good standing..." R.S. 29:769(e)(1). According to the *Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities*, at least 13 other jurisdictions have passed legislation since 2001 to similarly authorize interstate licensure recognition during declared emergencies. Unfortunately, the lack of uniformity and consistency among these laws generates confusion and uncertainty which may delay and impede the efficient and expeditious deployment of volunteer health practitioners. This act seeks to build upon the precedent established by these laws to improve their effectiveness and functionality.

Subsection (a) provides that a host state shall recognize the out-of-state license of a volunteer health practitioner as being of equivalent status to a license granted by the host state's

licensure board during an emergency. This is subject to all of the requirements of the act, including requirements that (1) the volunteer health practitioner be duly licensed in another state and in good standing; (2) that an emergency exist (as defined in Section 2(2)); (3) that the practitioner be registered with a registration system; and (4) that the practitioner comply with the scope of practice limitations imposed by the act, the laws of the host state, and any special modifications or restrictions to the normal scope of practice imposed by the host state or host entity pursuant to Section 8.

Interstate licensure recognition is essential to facilitate volunteer deployment during emergencies. The American Red Cross (ARC) reported that over 219,500 Red Cross disaster relief workers from all fifty states, Puerto Rico, and the Virgin Islands responded to Hurricane Katrina. *Facts at a Glance: American Red Cross Response to Hurricane Katrina and Rita* (January 19, 2006). The MRC reported that over 1,500 MRC members were willing to deploy outside their local jurisdiction on optional missions to the disaster-affected areas with their states agencies; almost 200 volunteers from 25 MRC units were activated by HHS, and over 400 volunteers from 80 local MRC units were deployed to support the ARC disaster operations in Gulf Coast areas. *Medical Reserve Corps Hurricane Response Final Report 1* (March 13, 2006).

The American Public Health Association (APHA) reported that health volunteers from New York, South Carolina, and Florida were deployed to Mississippi after Hurricane Katrina struck. According to Roger Riley, the past president of the Mississippi Public Health Association, “the Florida Department of Public Health was a particular godsend” as it provided employees, mobile clinics, and other vital support. *The Nation’s Health* (APHA October 2005). APHA also helped link public health workers with organizations seeking help by publicizing volunteer opportunities on its official website.

Allowing for interstate licensure recognition for health practitioners is consistent with efforts to suspend licensure requirements for non-health related professionals that proffer their services to affected individuals. The American Bar Association (ABA) Task Force, for example, advocated for the suspension of unlicensed practice rules by various states impacted by Hurricane Katrina so that lawyers from other jurisdictions might volunteer to assist in the affected areas. Twenty states acted upon its request. *In the Wake of the Storm: The ABA Responds to Hurricane Katrina* 10 (2006). Since this act contains multiple provisions unique to the provision of health services, however, and may not reflect specific problems associated with the use of other types of volunteer professionals during emergencies, its provisions should not be expanded to apply to other classes of professionals without careful consideration and evaluation.

Subsection (b) restricts this act’s protections from administrative sanction to volunteer health practitioners whose licenses are not subject to a suspension, revocation, or disciplinary restriction, or who have not voluntarily terminated their license under threat of sanction, in any state. This is consistent with the requirements underlying the provision of services in Section 8 such that practitioners who meet any of the aforementioned criteria have had their qualifications questioned as to their ability to adequately provide health services. The provisions of subsection (b) apply only to suspensions, revocations, restrictions and voluntary terminations that are disciplinary in nature and arise due to actual or suspected provider misconduct. A decision by a practitioner to not renew a license in a particular jurisdiction or to accept a requirement that a

license will not be active in a jurisdiction until certain continuing education or insurance requirements are satisfied because a practitioner is principally practicing in another jurisdiction, unrelated to findings or allegations of professional misconduct, will not disqualify an individual from practicing as a volunteer health practitioner under this act.

## **SECTION 7. NO EFFECT ON CREDENTIALING AND PRIVILEGING.**

(a) In this section:

(1) “Credentialing” means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.

(2) “Privileging” means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill.

(b) This [act] does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

### **Comment**

This section acknowledges the distinctions between credentialing and privileging, and specifically notes that the act is not intended to interfere with the enforcement or waiver of these requirements during an emergency. The credentialing process, as defined under subsection (a)(1), assesses the basic skills or competencies for health practitioners and utilizes criteria including their licensure, education, training, experience, and other qualifications that may aid in this determination.

This is distinct from the privileging process, defined in subsection (a)(2), in that credentialing does not grant any authority to engage in the provision of health services. Subsection (a) thus allows states to retain the flexibility to proffer guidelines and recommendations for intrastate entities that choose to integrate out-of-state volunteers. It also distinguishes the assessment of such volunteers under subsection (a)(1) from the actual grant of authority under subsection (a)(2) to provide health services.

Privileging decisions (under subsection (a)(2)) entail the grant of authority to individuals to provide specific types of health services, in addition to the general adherence to scope of practice guidelines established by state licensure boards. Privileging determinations are unique

to the entity granting the privileges to the practitioner and do not necessarily extend to services provided under another entity absent its express authority.

Credentialing and privileging standards can be an essential prerequisite to the actual delivery of health services in specific settings. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO), for example, requires hospitals to be prepared to engage in rapid credentialing procedures as needed to respond to emergency events. In 2003, the Commission recommended the creation of a credentialing database to support a national emergency volunteer system for health practitioners. *Health Care at the Crossroads: Strategies for Creating and Sustaining Community-wide Emergency Preparedness Systems* 24, 36 (JCAHO White Paper, March 2003). This would provide rapid access to information on volunteer clinicians during the planning and implementation of an emergency response. *Id.* at 36. To date this database has not been established.

Waivers or modifications of credentialing or privileging standards during emergencies have no effect on registration requirements under Section 5 or adherence to scope of practice considerations under Section 8. The authority granted by Section 8(d) to host entities to restrict services provided through the entity by volunteer health practitioners may, however, be used to establish credentialing or privileging standards applicable to volunteer health practitioners utilized during an emergency.

Any authority to provide health or veterinary services granted pursuant to a waiver or modification only apply for the duration of an emergency (as defined in Section 2(2)) and terminate when the emergency declaration is no longer in effect. At this point, the licensure recognition for an out-of-state volunteer health practitioner is no longer valid, and the practitioner must revert to strict compliance with the normal licensing laws of the host state.

## **SECTION 8. PROVISION OF VOLUNTEER HEALTH OR VETERINARY SERVICES; ADMINISTRATIVE SANCTIONS.**

(a) Subject to subsections (b) and (c), a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state.

(b) Except as otherwise provided in subsection (c), this [act] does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.

(c) [Name of appropriate governmental agency or agencies] may modify or restrict the

health or veterinary services that volunteer health practitioners may provide pursuant to this [act]. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of [state administrative procedures act].

(d) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this [act].

(e) A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(1) the practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(2) from all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

(f) In addition to the authority granted by law of this state other than this [act] to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) may impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(2) may impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(3) shall report any administrative sanctions imposed upon a practitioner licensed

in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

(g) In determining whether to impose administrative sanctions under subsection (f), a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill.

***Legislative Note:*** *The governmental agency or agencies referenced in subsection (c) may, as appropriate, be a state licensing board or boards rather than an agency or agencies that deal[s] with emergency response efforts.*

### **Comment**

Subsection (a) provides that volunteer health practitioners may only render health services that would be within the scope of practice of a similarly situated practitioner in the host state. Outside this act, the term “scope of practice” may have different meanings depending on how it is used. In the health professions (e.g., medicine, nursing, etc.), the “scope of practice” typically refers to the standards that separate one health profession from another governed by state licensure laws unique to each profession. Idaho, for example, precludes a health practitioner providing charitable medical care from acting outside the scope of practice “authorized by the provider’s licensure, certification or registration.” Idaho Code § 39-7703 (2005). Therefore, nurses are restricted from performing physician services because such conduct would be outside the scope of practice for nurses.

Another interpretation of “scope of practice” refers to the general services being provided for a specific entity that a volunteer health practitioner is serving. Alabama, for example, requires all volunteers to act “within the scope of such volunteer’s official functions and duties for a nonprofit organization, ... hospital, or a governmental entity....” Ala. Code §6-5-336(d)(1). Consequently, the scope of practice (i.e. functions and duties) would not stem exclusively from the explicit licensure requirements under state law. Rather, the types of services would stem from the privileging requirements set forth by the organization in which the volunteer is serving. This act, however, distinguishes between credentialing and privileging requirements and scope of practice limitations.

Under this act, “scope of practice” is defined in Section 2(12) to mean the extent of authorization to provide health or veterinary services established by the licensure boards of the state in which a practitioner is licensed and primarily engages in practice. This limits the types of services volunteer health practitioners can perform to those services unique to their profession. Nonetheless, the scope of practice may differ among individuals depending on the state(s) where they are principally licensed. The services a practitioner provides may be modified or restricted by a state licensing board or other agency pursuant to subsection (c) or restricted by a host entity

pursuant to subsection (d).

The prescriptive authority of nurse practitioners, for example, varies widely across states. Currently, fourteen states allow nurse practitioners to prescribe medications, including controlled substances, independent of physician involvement. Eighteenth Annual Legislative Update, *Nurse Practitioner* 31(1):12-38 (January 2006). Arkansas, for example, does not require physician collaboration or supervision for an advanced practice nurse. The Arkansas State Board of Nursing may grant a certificate of prescriptive authority to an advanced practice nurse upon (1) submission of proof demonstrating completion of a board-approved pharmacology course that includes preceptorial experience in the prescription of drugs, and (2) execution of a collaborative practice agreement with a physician who is licensed in Arkansas. A.C.A. § 17-87-310 (2006). Thirty-three states, however, require nurse practitioners to have some degree of physician involvement prior to prescribing medications. Illinois, for example, provides that advanced practice nurses may prescribe medications pursuant to a collaborative agreement with a physician. 225 ILCS 65/15-20(a). Some states have also recognized the potential overlap of services between professions, concluding that the governing law is that of the host state. Kansas' Attorney General, for example, issued an opinion concerning whether chiropractic manual manipulation was a procedure within the scope of practice of medicine and surgery. Although chiropractic manipulation may involve methods of practice "authorized to one or the other profession or both," it is not within the scope of practice of medicine and surgery as defined by Kansas state law even though it may be within the scope of practice under standards that such practitioners are generally held to as members of the chiropractic profession. Att'y Gen. Opinion No. 96-12, 1996 Kan. AG LEXIS 12.

As indicated above, (a) requires that a volunteer health practitioner (whether in-state or out-of-state) must adhere to the applicable scope of practice for similarly situated practitioners in the host state during the emergency. For practitioners licensed in the host state before the emergency, they must, of course, adhere to the state's scope of practice for their profession. For out-of-state practitioners who are not licensed in the host state before the emergency, the requirement to adhere to the host state's scope of practice is consistent with the recognition pursuant to Section 6(a) that out-of-state practitioners are to be viewed as licensed in the state for the duration of the emergency. Through subsection (a), the scope of practice requirements for similarly situated practitioners is coupled with their recognition of a temporary license as provided in Section 6(a). This helps ensure uniformity in the scope of practice among various practitioners from other jurisdictions.

Subsection (b) clarifies that this section (nor any other provisions of the act) does not authorize a volunteer health practitioner to provide services that are outside the practitioner's own scope of practice even if a similarly situated practitioner in this state would be permitted to provide the services. This restriction, which principally applies to practitioners whose licensure during non-emergencies is out-of-state, helps ensure that they do not provide services during emergencies that they would not be entitled to provide in their usual course of business or activities. This is significant where a volunteer health practitioner is licensed in more than one state.

For example, consider a nurse who may principally practice nursing in Illinois, although

also licensed in Arkansas and Kentucky. If Louisiana declares a state of emergency, the nurse may be deployed from Illinois to Louisiana to provide services. With the recognition of licensure pursuant to Section 6(a), the practitioner is permitted to practice in a state as if licensed in the state for the duration of the emergency. In Arkansas, the nurse may independently prescribe drugs without the supervision of a physician whereas in Illinois or Kentucky this may only be done with some degree of physician involvement or delegation of prescriptive authority (see scope of practice discussion above). The nurse's scope of practice will be limited to the services authorized in Illinois, not those authorized in Arkansas or Kentucky, since Illinois is the place of principal practice. It would not matter whether a similarly situated practitioner would be allowed to independently prescribe medications in Louisiana – the nurse could not do so under subsection (b) of this act. Simply stated, the volunteer health practitioner is permitted to do whatever a similarly situated physician in the host state may do unless such action is outside the practitioner's scope of practice in her principal state of practice or is impermissible because of a restriction by a state licensure board or other agency under subsection (c) or a restriction imposed by a host entity under subsection (d).

The impetus for these restrictions is to make sure that out-of-state practitioners do not provide services for which they are not competent, or that are not legally permissible in the host state, based on their licensure status in their principal state of practice. In the example provided above, if Arkansas offered another variation on the practitioner's scope of practice that was more limited than the scope of practice in Louisiana, this need not be considered by the practitioner in the performance of services since the practitioner does not principally engage in practice in Arkansas. To require practitioners to adhere to the scope of practice in every jurisdiction in which they are licensed during an emergency would be overly confusing and may stymie the provision of essential health services to individuals and populations.

Subsection (c) authorizes the state licensing board or other appropriate state agency (or agencies) to modify or restrict the type of services volunteer health practitioners may provide during an emergency. This provision must be considered *in pari materia* with the licensure laws and regulations of the host state. The rationale is to empower state agencies to adapt their emergency response plans to unforeseeable circumstances stemming from an emergency to meet patient needs or protect the public's health. In some instances, this may require empowering volunteer health practitioners to provide services that are not typically allowed under existing state licensure laws. In New Jersey, for example, the Commissioner of Health and Senior Services may waive any rules and regulations concerning professional practice in the state during an emergency. R.S. 26:13-18b(2). In other circumstances, a state may choose to limit volunteer health practitioners to only provide certain designated types of services not otherwise available because of the impact of a disaster. In either case, during an emergency there may be legitimate reasons for a state to modify or restrict the health services that a volunteer health practitioner may provide consistent with overriding public health objectives or patient needs.

Subsection (d) authorizes a host entity to restrict the services that volunteer health practitioners may provide. Host entities need to make decisions in real time to allow for an efficient and effective emergency response. This provision does not authorize a host entity to alter the scope of practice of a particular profession as defined by state licensure boards or other appropriate agencies. Therefore, a hospital acting as a host entity cannot authorize a nurse to

provide services that only a physician may perform. However, the hospital may limit the types of services that a volunteer health practitioner is authorized to perform. A hospital, for example, may delegate different responsibilities among volunteer health practitioners that limit what the practitioners can do in the treatment of patients or provision of public health services during a non-emergency. This population-based approach to the delivery of health services is consistent with the underlying public health objective of this act to assure the health and well-being of affected members of the population.

Subsection (e) provides that administrative sanctions for unauthorized practice may not be imposed against a volunteer health practitioner unless the practitioner has reason to know of any limitation, modification, or restriction on the services that a health practitioner may provide (pursuant to subsections (c) and (d)) or that a similarly situated practitioner in this state would not be permitted to provide the services (pursuant to subsection (a)). This provision recognizes that volunteer health practitioners that are already registered under Section 5 and authorized to provide health services must exercise their best judgment during exigent circumstances. It would be inapposite with the purpose of this Act -- to facilitate voluntarism -- to require volunteers to second-guess their every judgment because of concerns over administrative sanctions. So long as they are providing services that are within their normal scope of practice (subsection (b)) acting without actual knowledge that they should not do so or could not reasonably conclude from the facts known to them that they should not do so, they should not be subject to administrative sanctions during or following the emergency. However, if a volunteer health practitioner is expressly informed that certain services should not be provided or the practitioner should have so concluded, there is no immunity from administrative sanctions.

Subsection (f) authorizes a state licensing board or other disciplinary authority to impose administrative sanctions on any volunteer health practitioner whose conduct is inconsistent with licensure or other laws and for which subsection (e) does not afford protection. Subsection (f)(1) makes clear that a state licensing board or other appropriate disciplinary authority may sanction a health practitioner licensed in that state for conduct that occurs outside the state in response to an emergency that also occurs outside the state. Subsection (f)(2) authorizes the licensing board or disciplinary authority in the state in which the emergency occurs to sanction practitioners licensed in other states for conduct that occurs in the state in which the emergency occurs. This latter authority is a natural consequence of the practitioners' "temporary licensure" status. Subsection (f)(3) requires any state that imposes sanctions upon a volunteer health practitioner to inform the licensing board or other disciplinary authority in all states where the practitioner is known to be licensed. This may help licensing boards or other disciplinary authorities in all states to record and note outstanding sanctions against any practitioner licensed in their state.

Subsection (g) requires the state licensing board or other disciplinary authority to examine the conduct of a volunteer health practitioner potentially subject to administrative sanction against a backdrop of mitigating factors, including the practitioner's scope of practice, education, training, experience, and specialized skill. This requirement recognizes that during exigent circumstances, numerous factors may influence a volunteer health practitioner's actions or omissions.

## **SECTION 9. RELATION TO OTHER LAWS.**

(a) This [act] does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this [act]. Except as otherwise provided in subsection (b), this [act] does not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact.

(b) [Name of appropriate governmental agency or agencies], pursuant to the Emergency Management Assistance Compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state, a political subdivision of this state, or a municipality or other local government within this state.

***Legislative Note:** If a state adopting this act is a party to emergency assistance compacts in addition to the Emergency Management Assistance Compact, references to these other compacts should be added to this section.*

### **Comment**

Subsection (a) clarifies that this act does not supplant other protections from liability or benefits afforded to volunteer health practitioners under other laws. For example, the act does not limit or preclude the benefits afforded members of disaster relief organizations under state good Samaritan laws or under the federal Volunteer Protection Act, 42 U.S.C.S. §14501 *et seq.*

Subsection (b) creates a statutory path to allow private sector volunteers to be incorporated into state forces for the limited purpose of facilitating their deployment and use during an emergency through EMAC or other state mutual aid compacts or agreements. During Hurricane Katrina, many states sought to deploy volunteers through EMAC to provide them greater protections and fulfill state responsibilities pursuant to this compact. In many states, this required the hasty execution of agreements or issuance of executive orders authorizing the volunteers to become temporary state agents. To avoid future delays, this provision authorizes the appropriate state agency to incorporate any private sector volunteers into state forces as needed to deploy them via EMAC or other interstate compacts or agreements.

**SECTION 10. REGULATORY AUTHORITY.** [Name of appropriate governmental agency or agencies] may promulgate rules to implement this [act]. In doing so, [name of appropriate governmental agency or agencies] shall consult with and consider the recommendations of the entity established to coordinate the implementation of the Emergency

Management Assistance Compact and shall also consult with and consider rules promulgated by similarly empowered agencies in other states to promote uniformity of application of this [act] and make the emergency response systems in the various states reasonably compatible.

***Legislative Note:*** *If a state adopting this act is a party to emergency assistance compacts in addition to the Emergency Management Assistance Compact, references to these other compacts should be added to this section.*

### **Comment**

The purpose of this section is to authorize states to adopt regulations reasonably necessary to implement the provisions of this act. For example, a state may adopt rules governing how host entities may coordinate their activities with state emergency management agencies when using volunteer health practitioners as required by Section 5(b). Coordination of the use of emergency volunteer health practitioners is essential to ensure that resources are used effectively, to protect the health and safety of volunteers, to avoid situations in which efforts of spontaneous volunteers disrupt other relief activities, and to more effectively promote the restoration of the operations of regular health care delivery systems.

Regulations implementing this act may require host entities to supply emergency management agencies a list of number and type of volunteer health practitioners recruited by a host entity and the manner in which these personnel are being utilized. This information could then be used by state officials to identify and alleviate gaps in their emergency service delivery network. A state may not, however, impose requirements inconsistent with the provisions of this act, such as regulations requiring only the use of approved registration systems or requiring the individual review and approval of the qualifications of volunteer health practitioners.

States may also utilize the regulatory authority provided by this section to establish standards to promote the interoperability of registration systems. The minimum data elements of the ESAR-VHP system, for example, include a practitioner's name, contact information, degree(s), hospital(s) in which the individual enjoys privileges, specialty(ies), state license number, state license board check of disciplinary actions taken against the licensee, National Practitioner Databank check of liability actions, date of last reappointment, and status of the license (*e.g.*, active, inactive or retired). Comparable requirements could be imposed upon any registration system seeking to have its registrants used in a state.

In adopting regulations to implement this act, it is vitally important for state agencies to consult with emergency management officials in other states, along with interstate partners pursuant to existing mutual aid compacts (*e.g.*, the Emergency Management Assistance Compact (EMAC), the Interstate Civil Defense and Disaster Compact (ICCDC), the Nurse Licensure Compact (NLC), and the Southern Regional Emergency Management Assistance Compact) to ensure consistency among regulations and the interoperability of procedures during an emergency. Coordination and consultation of this type are essential to ensure that state regulatory requirements do not inadvertently recreate the very problems which this act seeks to

remedy, namely a lack of consistency and uniformity among state systems that may impair the effective and rapid deployment of volunteer health practitioners.

**SECTION 11. LIMITATIONS ON CIVIL LIABILITY FOR VOLUNTEER HEALTH PRACTITIONERS[; VICARIOUS LIABILITY].**

**Alternative A**

(a) Subject to subsection (c), a volunteer health practitioner who provides health or veterinary services pursuant to this [act] is not liable for damages for an act or omission of the practitioner in providing those services.

(b) No person is vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under subsection (a).

(c) This section does not limit the liability of a volunteer health practitioner for:

(1) willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;

(2) an intentional tort;

(3) breach of contract;

(4) a claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner; or

(5) an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.

(d) A person that, pursuant to this [act], operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

[(e) In addition to the protections provided in subsection (a), a volunteer health practitioner who provides health or veterinary services pursuant to this [act] is entitled to all the rights, privileges, or immunities provided by [cite state law.] ]

### **Alternative B**

(a) Subject to subsection (b), a volunteer health practitioner who receives compensation of [\$500] or less per year for providing health or veterinary services pursuant to this [act] is not liable for damages for an act or omission of the practitioner in providing those services. Reimbursement of, or allowance for, reasonable expenses, or continuation of salary or other remuneration while on leave, is not compensation under this subsection.

(b) This section does not limit the liability of a volunteer health practitioner for:

- (1) willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;
- (2) an intentional tort;
- (3) breach of contract;
- (4) a claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner; or
- (5) an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.

(c) A person that, pursuant to this [act], operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

[(d) In addition to the protections provided in subsection (a), a volunteer health practitioner who provides health or veterinary services pursuant to this [act] is entitled to all the rights, privileges, or immunities provided by [cite state law].]

## Comment

### 1. Background and General Purpose.

The principle that some degree of civil liability protection should be provided by volunteer health practitioners in emergency settings has become deeply embedded into state and federal law. Virtually all states have enacted “Good Samaritan” laws that protect various types of health professionals responding to emergency incidents, such as sudden and unanticipated traumatic injuries, or the onset of life threatening conditions, such as cardiac arrest and seizures, from liability for ordinary negligence. Department of Health and Human Services. Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP): Legal and Regulatory Issues and Solutions. Washington, DC: (May) 2006; Appendix D.

At the federal level, the Volunteer Protection Act, 42 U.S.C. § 14501 *et seq*, provides that volunteers receiving less than \$500 in compensation (other than reasonable reimbursement or allowances for expenses actually incurred) who provide services through nonprofit organizations or governmental entities are not liable for harm caused by their acts or omissions, provided the volunteers (1) are acting within the scope of their authority on behalf of a nonprofit organization or governmental entity; (2) are properly licensed, certified, or authorized by the appropriate authorities as required by law in the state in which the harm occurred; (3) have not engaged in willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individuals harmed by them; and (4) have not caused the harm by operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires its operator to possess an operator’s license or maintain insurance. Unless a state makes a statutory election of non-applicability, the federal Volunteer Protection Act preempts inconsistent state laws, except for laws providing additional protection from liability for volunteers. *See* 42 U.S.C. § 14502.

All 50 states have adopted the Emergency Management Assistance Compact (EMAC), which provides that officers or employees of a party state rendering aid in another state pursuant to the compact are considered “agents of the requesting state” for tort liability and immunity purposes and provides that “no party state or its officers or employees rendering aid in another state pursuant to [the] compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith.” Under EMAC, “good faith” does not include “willful misconduct, gross negligence, or recklessness.”

A substantial number of states have also limited the liability for negligence of volunteers, volunteer organizations, and contractors assisting in emergency or disaster relief efforts. *See, e.g.*, Alaska Stat., § 09.65.091; Cal. Bus. & Pro. Code, § 2395; Cal. Gov. Code, § 8659; 28 Conn.

Gen. Stat. § 517-28-13; Del. Code tit. 10, § 3129; D.C. Code § 7-401; Fla. Stat. Ann. §§ 768.1345; Ga. Code Ann. § 51-1-29.1(b); Haw. Rev. Stat. §128-18; Idaho Code Ann. § 46-1017; 20 Ill. Con. Stat., § 3305/15; Iowa Code Ann. § 135.147; Kan. Stat. Ann. § 48-915; Ky. Rev. Stat. Ann. § 39A-280(3); La. Rev. Stat. Ann. § 9:2793.2-7; Mich. Comp. Laws §§ 30.411(4); N.H. Rev. Stat. Ann. § 21-P(41)(I); Nev. Rev. Stat. § 41.500; N.C. Gen. Stat. § 166A 14; Or. Rev. Stat. § 401.667; 42 Pa. Cons. Stat. § 7704; Tex. Civ. Pro. & Rem. Code Ann. § 79.003; Utah Code Ann., §§ 58-13-12; Va. Code Ann. §§ 58-13-2, 8.01-225.01; Wyo. Stat., § 35-4-114. Similar immunities have also been extended to emergency medical technicians and operators of ambulances and emergency vehicles; individuals and organizations responding to hazardous material and mine rescue incidents; personnel responding to emergencies at school and athletic events; ski patrols; and operators of free clinics. Several states have also adopted volunteer protection acts which mirror or expand the liability relief provided by the Federal Volunteer Protection Act. *Annotated UEVHPA*, notes 3-9 (The *Annotated UEVHPA* is a version of this act with detailed references notes available at [www.uevhpa.org](http://www.uevhpa.org)).

The purpose of Section 11 is to provide clear guidance to volunteer health practitioners regarding the extent of their exposure to liability for negligence while providing health or veterinary services pursuant to this act, based upon principles consistent with those currently incorporated into state law. Without such guidance, practitioners will be presented with a confusing array of state and federal laws that will generate substantial uncertainty regarding whether and to what extent they may face exposure to civil liability when responding to emergencies under this act.

Section 11 provides two alternatives that establish different levels of protection. Alternative A provides immunity from liability for ordinary negligence to all volunteer health practitioners and immunity from vicarious liability to the entities engaged in deploying and using them. Alternative B provides immunity from liability for ordinary negligence only to practitioners who are nominally compensated in a manner comparable to the federal Volunteer Protection Act and defers to other state law the question whether the entities deploying and using them may be vicariously liable. While no recommendation is made as to which of these alternatives is more appropriate, it is critical that each state articulate the protections it provides to enable health practitioners to make informed decisions about volunteering.

## **2. Constitutionality.**

Under many state constitutions, provisions ensuring access to the courts have been interpreted as ensuring access to a remedy for injuries. *See, e.g.,* David Schuman, *The Right to a Remedy*, 65 Temple L. Rev. 1197, 1201 (1992). While inconsistent state laws are clearly preempted by the federal Volunteer Protection Act, and the principle that it is appropriate to provide individuals and organizations engaged in disaster relief and emergency response activities with some degree of relief from civil liability is broadly accepted and deeply embedded into current federal and state law, concerns have nonetheless been expressed that by expanding immunity beyond that currently provided by the federal act, Alternative A may impair the right of access unless a substitute remedy, or *quid pro quo*, is provided. *See* Thomas R. Phillips, *The Constitutional Right to a Remedy*, 78 N.Y.U. L. REV. 1309, 1335 (2003); *Cf., PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 93-94 (1980) (“there are limits on governmental authority

to abolish ‘core’ common law rights, ... at least without a compelling showing of necessity or a provision of a reasonable alternative remedy.”).

The expansion of civil immunity beyond uncompensated individuals to include all volunteer health practitioners and the clear application of immunity from vicarious liability to other persons engaged in the deployment and use of volunteers as provided by Alternative A are premised upon the assumption that it is constitutionally appropriate for a state legislature to conclude that “a compelling showing of necessity” and an appropriate *quid pro quo* are provided by the impact of Alternative A in making emergency healthcare services more readily available to disaster victims. The dearth of precedent striking down Good Samaritan and other state volunteer protection acts illustrates that such legislative determinations satisfy constitutional requirements.

Whether to adopt Alternative B, which confirms that existing federal immunities apply to volunteer health practitioners, or Alternative A, which more expansively grants immunities to facilitate the deployment and use of volunteer health practitioners, is a policy decision that must be made by each state. In making this policy determination, states should consider a variety of factors, including reports that health professionals deployed to mass evacuation shelters during the 2005 hurricanes were generally not permitted by their host entities to provide more than basic health services to shelter residents because of liability concerns. Medical Reserve Corps Response to the 2005 Hurricanes; Final Report, March 13, 2006; 18. Explicit statutory protection from liability may induce entities, such as the American Red Cross and other volunteer organizations active in disaster relief efforts, to expand available services in a manner consistent with the qualifications and skills of the volunteer health practitioners being deployed. Conversely, states may also wish to consider whether measures outside the scope of this act, such as the creation of special disaster relief funds and victims compensation programs, may accomplish comparable objectives with less impact upon remedies available for the negligent provision of healthcare and veterinary services.

To the extent a state concludes that for legal or policy reasons it is not appropriate to adopt Alternative A, Alternative B provides an approach that does not expand the scope of immunity generally available in all jurisdictions under current law, but instead removes potential impediments to the application of existing immunities to volunteer health practitioners providing services under this act. NCCUSL expresses no preference between these alternatives. Rather, it is expected that each state will weigh the relevant policy considerations, make its own constitutional judgment, and select the alternative most appropriate to its circumstances.

### **3. Certain Conduct Not Protected.**

In both Alternatives A and B, liability protections apply only to volunteer health practitioners who are providing health or veterinary services pursuant to this act. These services are distinguishable from services that are of a non-health-related nature and afford no direct health benefit to individuals or populations (*e.g.*, the operation of a non-emergency motor vehicle, the provision of administrative services). The protections are narrowly tailored and do not extend to conduct that exceeds a practitioner’s scope of practice as it may be limited by the state or host entity (*see* UEVHPA Sections 4, 8). For example, a lab technician will be deemed

to have exceeded the scope of practice of a similarly situated practitioner by performing unsupervised surgery on an individual during an emergency. Should harm to the patient result, the lab technician will not enjoy the liability protections provided by this act.

Each alternative also contains a provision that limits protection to ordinary negligence. There is no protection for willful misconduct or wanton, grossly negligent, reckless, or criminal conduct, nor is there protection from intentional torts. This is consistent with the approach taken by other laws, including the federal Volunteer Protection Act. Hodge, J.G., Bhattacharya, D, Garcia, A. Assessing criminal liability of volunteer healthcare workers in emergencies. *American Journal of Disaster Medicine* 2006; 1(1):12-17.

Under each alternative, volunteer health practitioners remain liable for their contractual breaches. They also remain liable for direct claims brought against them by host entities or entities in any state that employ the volunteers or use their services. Thus, host entities are not prevented by this act from seeking redress against volunteer health practitioners for misconduct that may not necessarily have a direct health effect on individuals or populations. Examples may include mismanagement of materials during a response effort or conversion of property or goods provided for the sole purpose of distribution to affected individuals or populations of an emergency. This limitation is not intended, however, to expose the volunteer health practitioner to the very liability from which there is protection under subsection (a). For example, should a host entity be held vicariously liable for a negligent act committed by a protected volunteer health practitioner in a state that adopts Alternative B, the entity should not be permitted to assert an indemnification claim against the practitioner. The protection from liability espoused in subsection (a) of either alternative is intended to insulate volunteer health practitioners from having to pay damages arising from their acts or omissions in providing health or veterinary services, no matter how or by whom a claim for damages is brought.

Pursuant to Alternative A, subsection (c)(5), and Alternative B, subsection (b)(5), a volunteer health practitioner is not exempt from liability for acts or omissions relating to the operation of a vehicle for which the state requires the operator to have either a valid operator's license or liability insurance. The intent is to hold practitioners liable for a type of conduct that is generally outside the scope of their responsibilities as volunteers. Other state laws may, however, provide liability protection to operators of ambulances and other emergency response vehicles, vessels or aircraft. States having such laws should include citations to such laws in subsection (e) of Alternative A or subsection (d) of Alternative B.

#### **4. Protected Conduct.**

Subject to the exceptions for unprotected conduct discussed in Comment 3, each alternative begins in subsection (a) with a statement of the level of protection from civil liability being provided to volunteer health practitioners for acts or omissions that occur during the provision of health or veterinary services pursuant to the act. The immunity provided by subsection (a) is limited to volunteer health practitioners and does not extend to host or other entities that may deploy or use them.

Alternative A, subsection (a), contains the broadest protection, immunizing practitioners

completely from ordinary negligence. The immunity provided to practitioners by Alternative A is comparable to the immunity provided to state and local government officials and employees deployed to other states in response to declared emergencies under EMAC. Alternative A is premised on the assumption that private sector organizations and volunteers who supplement the efforts of government agencies and employees at no cost to the taxpayers and operate subject to the direction and control of the host state's emergency management officials deserve similar protections.

Alternative B, subsection (a), essentially parallels the liability protections provided by the federal Volunteer Protection Act, 42 U.S.C. § 14501 et seq. It thus applies only to volunteer health practitioners who do not receive compensation in excess of [\$500] per year. "Compensation" for the purposes of this subsection does not include reimbursement of, or allowance for, reasonable expenses, nor does it include continuation of salary or other remuneration while on leave from an employer. The federal act provides that no volunteer of a nonprofit organization or governmental entity is liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity. 42 U.S.C. § 14503(a). This protection, however, only applies to volunteers who are "properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred" and who practice "within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity." Under current law, significant issues may arise about whether an out-of-state practitioner is properly licensed, certified, or authorized by the "appropriate authorities" of a state. Likewise, under current law, when a volunteer is dispatched by a nonprofit organization or governmental entity and practices in a health clinic or facility operated during a disaster by another host entity, questions may arise about whether the volunteer is "acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity." Alternative B, subsection (a), is intended to resolve such uncertainties.

Each alternative also includes a subsection (subsection (d) in Alternative A and subsection (c) in Alternative B) that protects any person that "operates, uses, or relies upon information provided by a volunteer health practitioner registration system" from liability for an act or omission relating to that conduct. A goal of the act is to require advance registration and deployment of volunteer health practitioners during emergencies so as to ensure that skilled, pre-vetted volunteers are used. However, the exigencies of the circumstances may result in unintentional miscommunications or misinformation concerning prospective volunteers. Thus, a person who operates or uses a registration system or relies on the information provided by a system is not liable for the harm caused by negligent conduct that arises if the data about a volunteer registered with the system are inaccurate, misstated, or miscommunicated. Of course, the protection provided by the subsection does not apply to an intentional tort or to willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

Finally, each alternative contains a bracketed subsection (subsection (e) in Alternative A and subsection (d) in Alternative B) that permits a state to extend the liability protections of other state laws to volunteer health practitioners. Examples of such other state laws that it may be desirable to specify as applicable to volunteer health practitioners are identified in notes 3, 4, and 9. For example, a state law may protect individuals deployed by disaster relief organizations in response to requests from state and local officials from liability for all types of negligence

claims, not merely claims relating to the provision of health or veterinary services. This subsection would allow the state to expressly acknowledge that such immunities apply to volunteer health practitioners who provide health or veterinary services pursuant to this act. This subsection is consistent with the policy expressed in Section 9(a) which provides that, “This [act] does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this [act].”

Alternatives A and B do not exhaust the range of policy choices a state might appropriately make. A state might, for example, select the limited immunities of Alternative B for volunteer health practitioners, yet deem it prudent to provide entities that deploy them and use their services with protection from vicarious liability in order to encourage such entities to provide victims with a broader range of services. To effectuate this policy, a state might determine that the protection from vicarious liability should extend to the ordinary negligence of all volunteer health practitioners, not just those immunized under Alternative B, subsection (a).

A state might also consider providing additional protection for victims of malpractice by assuming liability for the ordinary negligence of volunteer health practitioners under its tort claims act. This model was followed by Tennessee in its adoption of this act and is consistent with the relief available to tort victims under EMAC and under the laws of several other states. *See, e.g.*, 10 Del. Code, § 3129(d); Iowa Code, § 125.24(4) (as applied to healthcare facilities operating free clinics); Missouri Rev. Stat., §§ 44.125.1 & 105.77; 58 Tenn. Code ch. 2 (P.L. Ch. 579, June 12, 2007); and Wisc. Stat. §§ 165.25 (6), 250.42(4)(b), 893.82 & 895.46.

A state electing to provide state tort claims act coverage for claims against volunteers under this act may substitute the following language for subsections (a) and (b) of Alternative A.

*(a) Subject to subsection (c), a volunteer health practitioner who provides health or veterinary services pursuant to this [act] is not liable for the payment of a judgment based on an act or omission of the practitioner in providing those services and may not be named as a defendant in an action based on such an act or omission. However, a volunteer health practitioner is deemed to be an agent or employee of this state under [cite the state tort claims act] while providing health or veterinary services pursuant to this [act], and the state may be named as defendant and is liable for the payment of any judgment based upon an act or omission of the practitioner as provided in [the state tort claims act].*

*(b) No person other than this state is vicariously liable for payment of a judgment based on the act or omission for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under subsection (a).*

## **5. Vicarious Liability.**

Subsection (b) of Alternative A directly confers immunity from vicarious liability upon entities that deploy and use volunteer health practitioners. As articulated by Section 7.03(2) of

the *Restatement of the Law of Agency*, 3<sup>rd</sup>, the common-law doctrine of vicarious liability provides that a principal is liable to a third party harmed by an agent's tortious conduct if the agent is an employee who commits the tort while acting within the scope of employment or with apparent authority. Section 7.03(1) of the *Restatement* also provides that a principal is liable directly to a third party harmed by an agent's tortious conduct if (i) the agent acts with actual authority, (ii) the principal ratifies the conduct, (iii) the principal is negligent in selecting, supervising, or otherwise controlling the agent, or (iv) the principal delegates to the agent a duty to use care to protect other persons or their property and the agent fails to perform the duty. Section 11 is limited to vicarious liability and nothing in the section limits the direct liability of a person deploying or using the services of a volunteer health practitioner pursuant to this act.

The extent to which vicarious liability applies to the acts or omissions of volunteer health practitioners is uncertain because in most circumstances the volunteers are not acting with actual or apparent authority to bind the person that deploys or uses their services, nor are they common-law employees of that person. Under Section 220 of the *Restatement of the Law of Agency*, 2<sup>nd</sup>, an individual is not a "servant" (or "employee" in contemporary terms) if the person is not employed for a substantial length of time, is not engaged in work as part of the regular business of the putative employer, or if the putative employer is not engaged in a "business." Because of the uncertainty of application of these principles, subsection (b) of Alternative A provides protection to the extent to which a person that deploys or uses a volunteer health practitioner would otherwise be subject to vicarious liability for the practitioner's acts or omissions.

Although Section 217 of the *Restatement of the Law of Agency*, 2<sup>nd</sup>, contains language indicating that vicarious liability may be imposed on a principal even if the agent who commits the tort is immune, there is no significant supporting body of decisional law. The proposition was reduced to a mention in a Reporter's Note in the *Restatement of the Law of Agency*, 3<sup>rd</sup>. The cases in which vicarious liability has been imposed notwithstanding an agent's immunity have tended to turn on the interpretation of a tort claims or other statute rather than on general common-law principles. See, e.g., *Napier v. Town of Windham*, 187 F.3d 177, 191 (1<sup>st</sup> Cir. 1999) (under Maine tort claims statute, municipality not immunized from vicarious liability because of statutory immunity of police officers but able to claim its own immunity by showing lack of insurance; summary judgment in favor of city denied because of failure to make such a showing); *Regester v. County of Chester*, 797 A.2d 898, 902, 906 (Pa. 2002) (immunity provided under Pennsylvania Emergency Medical Services Act to emergency technicians and municipalities held not to apply to medical center because statute failed clearly to confer such immunity). In any event, nothing prevents, and the cited cases stand for the proposition that, immunity for vicarious (or other) liability may be provided by statute.

The fact that Alternative B does not expressly provide immunity for vicarious liability should not raise an implication that such liability exists. Rather, it represents a policy judgment by NCCUSL that states choosing to limit the immunity provided to volunteer health practitioners to that generally available under federal law might also choose to limit protection from vicarious liability to that generally available under the existing laws of the state. A similar policy judgment was made by Congress in adopting the Volunteer Protection Act, which provides that federal law shall not be deemed inconsistent with any state law which makes a volunteer organization "liable for the acts or omissions of its volunteers to the same extent as an employer

is liable for the acts or omissions of its employees.” 42 U.S.C. § 14503(d)(2). As noted in Comment 4, a state adopting Alternative B might nevertheless choose to adopt statutory language clarifying that there is no vicarious liability for the ordinary negligence of volunteer health practitioners. Some state Volunteer Protection Acts make nonprofit organizations expressly liable under the doctrine of respondeat superior for acts of volunteers. *See, e.g.*, Ala. Code, § 6-5-336(e); Ariz. Rev. Stat., § 12-982(B); Fla. Stat. Ann., § 768.1355(2); Haw. Rev. Stat., § 662D-2(b); Kan. Stat. Ann., § 60-3601(d); Me. Rev. Stat., tit. 22, § 158. A similar number of jurisdictions, however, take an opposite approach. *See, e.g.*, Colo. Rev. Stat., § 13-21-115.5(4)(ii); 10 Del. Code, § 8133(e); Georgia Code Ann., § 51-1-29.1; and Utah Code Ann., § 78-19-3.

## **SECTION 12. WORKERS’ COMPENSATION COVERAGE.**

(a) In this section, “injury” means a physical or mental injury or disease for which an employee of this state who is injured or contracts the disease in the course of the employee’s employment would be entitled to benefits under the workers’ compensation [or occupational disease] law of this state.

(b) A volunteer health practitioner who dies or is injured as the result of providing health or veterinary services pursuant to this [act] is deemed to be an employee of this state for the purpose of receiving benefits for the death or injury under the workers’ compensation [or occupational disease] law of this state if:

(1) the practitioner is not otherwise eligible for such benefits for the injury or death under the law of this or another state; and

(2) the practitioner, or in the case of death the practitioner’s personal representative, elects coverage under the workers’ compensation [or occupational disease] law of this state by making a claim under that law.

(c) The [name of appropriate governmental agency] shall adopt rules, enter into agreements with other states, or take other measures to facilitate the receipt of benefits for injury or death under the workers’ compensation [or occupational disease] law of this state by volunteer health practitioners who reside in other states, and may waive or modify requirements for filing,

processing, and paying claims that unreasonably burden the practitioners. To promote uniformity of application of this [act] with other states that enact similar legislation, the [name of appropriate governmental agency] shall consult with and consider the practices for filing, processing, and paying claims by agencies with similar authority in other states.

***Legislative Notes:*** *The bracketed term “occupational disease” should not be used in states that do not have specific occupational disease laws.*

*States should review their workers’ compensation and occupational disease laws to determine whether they have appropriate provisions for providing wage loss benefits to volunteer health practitioners. If necessary, an additional subsection cross referencing special provisions included in workers’ compensation laws for calculating wage-loss benefits for volunteers, or designating how wage loss benefits for volunteers will be determined, should be added to this section.*

*States should also review their workers’ compensation and occupational disease laws to determine whether current laws may provide more expansive benefits to volunteers than are otherwise provided by this act, such as benefits for injuries or deaths occurring during disaster training or drills. If current state laws provide more expansive benefits and states wish to extend such benefits to volunteer health practitioners under this act, a provision should be added to this section conforming the scope of benefits available under this act to those available under the other laws.*

*This section defers to other provisions of state law to determine whether and to what extent the option to elect workers’ compensation or occupational disease benefits constitutes the exclusive remedy against the state for injuries or death that occurs when acting as a volunteer health practitioner in the state. If existing state laws do not adequately address this topic, states should consider whether appropriate language clarifying whether and to what extent these benefits constitute an exclusive remedy should be added to this section.*

### **Comment**

Section 12 is intended to provide redress for injuries or deaths incurred by volunteer health practitioners providing health or veterinary services during an emergency. For the purposes of this protection, subsection (a) stipulates that “injury” includes physical or mental injuries or diseases for which an employee of the state, acting within the course of employment, would be entitled to workers’ compensation coverage. Occupational diseases are sometimes covered under legislation other than a state’s basic workers’ compensation statute, but even so, a volunteer health practitioner is entitled to benefits if a state employee would be so entitled.

The principle that state and local governments should extend workers’ compensation coverage to individuals voluntarily performing valuable public services is well recognized under existing state law. For example, virtually all states extend workers’ compensation protection to

members of volunteer fire departments and most states provide similar benefits to police auxiliaries. In at least 30 jurisdictions, workers' compensation protections have been extended to volunteers participating in disaster response activities, especially health professionals. Because current state law has developed on an *ad hoc* basis without the benefit of any unifying nationwide principles, however, a complex array of local procedural requirements, categorical restrictions, and limitations exist which act as an effective barrier to the reliance upon these laws in the development of integrated nationwide volunteer response efforts. For example, some states limit coverage to volunteers serving pursuant to formal compacts or mutual aid agreements; require the adoption of local ordinances, resolutions, executive orders, or rules before coverage becomes available; limit benefits to the extent of specific appropriations; require loyalty oaths, formal accreditation, or special identification cards; mandate the specific approval or acceptance of volunteers by state officials; require "regular" or "permanent" enrollment; or prohibit any form of material remuneration. *Annotated UEVHPA*, notes 11-17 (The *Annotated UEVHPA* is a version of this act with detailed reference notes available at [www.uevhpa.org](http://www.uevhpa.org)).

To remedy the lack of consistency and uniformity among the states, subsection (b) allows volunteer health practitioners who are not otherwise eligible for workers' compensation benefits, through their employers or other sources, to elect to be deemed employees of the host state for purposes of workers' compensation claims. This approach has the advantage of treating all volunteers equally and avoiding difficult issues associated with determining whether and to what extent the workers' compensation systems of host states provide coverage for volunteers. As such, Section 12 is based upon the laws of multiple states which provide workers' compensation benefits to all volunteers who are appropriately registered or provide services pursuant to the direction and control or at the request of emergency management officials. *Annotated UEVHPA*, note 18. Section 12 differs from existing state law, however, in that it expressly provides coverage for volunteer health practitioners under this act and takes into account the specialized types of registration systems and practice requirements imposed by this act.

States should consider whether to adopt by reference or add provisions to this section regarding the calculation of wage-loss benefits for volunteer health practitioners. Some prospective volunteer health practitioners may have substantial earnings in the prior year through their existing employers. Others may be retired health professionals who no longer earn significant income. Some states have provisions in their workers' compensation and occupational disease laws clarifying that for volunteers provided workers' compensation or occupational disease benefits, the loss of earnings must be based on the earnings of the practitioner for the previous calendar year from all sources, and not limited to the compensation, if any, received while acting as a volunteer health practitioner, subject to minimum benefits for loss of wages. Many states have adopted specialized rules for determining the wage-loss benefits payable to volunteers. *Annotated UEVHPA*, note 19.

To the extent such provisions are absent from existing state law, a state enacting this act should consider whether to add such a provision to this subsection. For example, an additional subsection could be added providing that:

*"Benefits provided to a volunteer health practitioner under this section for the loss of earnings shall be based upon the total earnings of the practitioner from all sources for the previous calendar year, but may not be less than the statewide*

*average hourly wage for a 40-hour week.”*

States should also consider how best to coordinate the scope of benefits provided by this section with benefits that may otherwise be available to all or certain types of volunteers responding to emergencies under other state laws. In several jurisdictions, for example, workers' compensation benefits may be available for injuries or death occurring during emergency training and drills. *See, e.g.*, Ala. Code § 31-9-16; Ariz. Rev. Stat. § 23-901(n); Ark. Code Ann. § 12-75-129(e)(2); Conn. Gen. Stat. § 28-14; Haw. Rev. Stat. § 127-7; Idaho Code Ann. § 72-205(5); 20 Ill. Comp. Stat. § 3305/10(k); Iowa Code § 85-61; Md. Code, Lab & Emp. § 9-232.1(b)(1); Ohio Rev. Code § 4123.036(c); Or. Rev. Stat., § 401.025(5); 35 Pa. Const. Stat. § 7706; R.I. Gen. Laws § 28-31-12; Wis. Stat. § 166.03(8)(d). Although Section 3 provides that this act only applies to volunteer health practitioners “who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect,” if states wish to apply provisions of other existing laws providing workers' compensation coverage during drills or training to volunteer health practitioners, a provision to that effect may be added as a separate subsection. The subsection might state that:

*“A volunteer health practitioner who dies or is injured while participating in training or drills necessary to respond to emergencies may claim benefits pursuant to this section to the same extent as provided by [cite other applicable state law].”*

States without such laws may also, if they deem it appropriate, add comparable provisions to this section. The absence of such a provision would not reduce the benefits provided to volunteers who qualify directly under such laws unless the laws are designated for repeal pursuant to Section 14. *See* Section 9(a).

Subsection (c) authorizes an appropriate governmental agency to adopt rules, enter into agreements with other states, or take other measures to facilitate the receipt of workers' compensation benefits by volunteer health practitioners who reside in other states. These practitioners may find it administratively or logistically burdensome to pursue workers' compensation benefits in the host state. Subsection (c) is intended to reduce these burdens by instructing the host state to take active measures to waive or modify requirements for filing, processing, and paying claims that unreasonably burden the practitioners. To promote uniformity of application, these measures should be taken in consultation with other states that enact similar legislation.

Enactment of this section may expose states to fiscal responsibilities in extending workers' compensation benefits to volunteer health practitioners. However, the increased costs may potentially be recovered by states through federal reimbursement of disaster related costs and expenses under the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (2002).

**SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote

uniformity of the law with respect to its subject matter among states that enact it.

**Comment**

Uniformity of interstate recognition of licensure for volunteer health practitioners, and the grant of particular privileges and protections for those volunteers who provide health or veterinary services during an emergency to individuals or populations, are two principle objectives of this act.

The goal of uniformity among the states may be enhanced by use of interoperable registration systems pursuant to Section 4. Examples may include ESAR-VHP systems that consist of thorough substantive and technical criteria that meet essential system requirements and provide additional security safeguards with respect to accessibility by authorized personnel, privacy concerns, and interoperability with other systems.

**SECTION 14. REPEALS.** The following acts and parts of acts are repealed:

(1) .....

(2) .....

**Comment**

Because the objective of this act is to expand rights, privileges, immunities and benefits available to volunteer health practitioners and entities engaged in their deployment and use, statutes or parts of statutes designated for repeal pursuant to this section should be limited to those that interfere with or are inconsistent with the objectives of this act, such as those which limit the interstate recognition of licenses issued to volunteer health practitioners during emergencies, impose greater degrees of exposure to civil liability upon volunteers or organizations engaged in their deployment or use, or deny workers' compensation benefits to volunteer health practitioners.

**SECTION 15. EFFECTIVE DATE.** This [act] takes effect . . . .